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Letter dated 13 May 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 27 February 2004 (S/2004/150). The Counter-Terrorism Committee has received the attached fourth report from Colombia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Note verbale dated 13 May 2004 from the Permanent Mission of Colombia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of Colombia to the United Nations presents its compliments to the Counter-Terrorism Committee and has the honour to transmit herewith its replies supplementary to the report of Colombia on counter-terrorism measures, submitted pursuant to Security Council resolution 1373 (2001) (see enclosure).

The Permanent Mission of Colombia notes that no replies to questions 1.10, 1.16, 1.17 and 1.20 are included because the information provided by the competent bodies does not address the concerns expressed by the Committee; consequently, the relevant information will be requested from those bodies and will be transmitted as soon as possible.

Report supplementary to the report submitted by Colombia on 11 July 2003 to the Counter-Terrorism Committee established pursuant to Security Council resolution 1373 (2001)

Letter No. S/AC.40/2004/MS/OC.382

1.1 The CTC notes from the first report (at page 16) that Colombian policies for the suppression of the financing of terrorism include the training of the specialized personnel of entities responsible for detecting and monitoring operations linked to terrorist activities. In this regard, the CTC would appreciate knowing whether Colombia provides its administrative, investigative, prosecutorial and judicial authorities with specific training aimed at enforcing its laws in relation to:

- **Typologies and trends aimed at countering terrorist financing methods and techniques; and**
- **Techniques for tracing property which represents the proceeds of crime or which is to be used to finance terrorism with a view to ensuring that such property is frozen, seized or confiscated.**

Please also outline the relevant programmes and/or courses in these areas. The CTC would further appreciate receiving information regarding any mechanisms/programmes that Colombia has put in place to train its various economic sectors in the detection of unusual and suspicious financial transactions related to terrorist activities and in the prevention of the movement of illicit money.

The various entities related to money-laundering offer courses on the topic which are primarily financed by, and provided under the auspices of, international technical cooperation. Personnel in the National Unit for Termination of Ownership Rights and Suppression of Money-Laundering of the Office of the Prosecutor-General have made presentations at the following seminars:

- Third training, information, introduction and overview seminar on money-laundering and the termination of ownership rights, organized by the Inter-Agency Committee against the Financing of Subversion for the benefit of armed forces intelligence officers. The seminar is being offered in each of the six divisions of the army and focuses on the knowledge, development and application of Colombia's existing legal instruments aimed at combating the financing of narcoterrorist groups and on the presentation of some typologies used by such organizations for the movement of their illicit resources.
- Specialized seminar on the termination of ownership rights, organized by the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) in the Justice Department of the United States of America. The seminar was offered in Colombia's principal cities for the benefit of prosecutors, judges and magistrates and focused on the knowledge, development and application of the action for termination of ownership rights as a specific legal instrument for identifying and terminating the ownership of assets of illicit origin or destination, including those used by terrorist organizations.

With respect to typologies and trends in the area of the financing of terrorism, the Administrative Department of Security (DAS) has handled and is currently working on cases involving forms of money-laundering used by criminal organizations, including narcoterrorists.

The following is a list of the modalities or typologies identified by DAS:

1. "*Pitufeo*": Breaking down of financial transactions in order to avoid monitoring by having operations carried out by many different people;

2. Use of legal businesses such as supermarkets, gas stations, discotheques, drugstores and bars in order to launder money;

3. Bribery of officials in order to avoid being identified;

4. Use of couriers to physically bring money into or out of the country in an illicit manner;

5. Purchase of lottery tickets;

6. Over-invoicing;

7. Duplicate invoicing;

8. Under-invoicing on imports;

9. Purchase of failed businesses (i.e., football teams);

10. Fictitious loans;

11. Fictitious exports;

12. Use of the black market in household appliances;

13. Use of currency exchange professionals;

14. Use of credit cards guaranteed by a co-signer;

15. Contraband;

16. Purchase of vouchers from winners at casinos;

17. Purchase of gold in order to legalize it as "*guacas*" (archaeological finds);

18. Over-invoicing on exports;

19. Real estate investments;

20. Trading in various items of value;

21. Use of inactive accounts with the complicity of banking officials;

22. Use of foreign exchange bureaux;

23. Use of Colombian accounts to deposit money with use of error and subsequent threats; and

24. Donations to various non-governmental organizations (NGOs) from abroad.

With regard to techniques for identifying and tracing property which represents the proceeds of illicit activities, once the DAS officials have established that an individual or organization has links with criminal activities and that there are proceeds of these activities, verification is undertaken in order to identify the assets owned by the organizations in question and the identity of its core membership and front men. This work is carried out in the following manner:

Various entities such as the Agustin Codazzi Geographical Institute, the Official Records Office (*Oficina de Instrumentos Públicos*), the Chambers of Commerce, Civil Aeronautics, the Maritime and Ports Office (DIMAR), the Superintendence of Banks, the Directorate of National Taxes and Customs (DIAN) and the Information and Financial Analysis Unit (UIAF) are asked to provide information on properties, corporations, businesses, aircraft, ships, vehicles, financial assets in Colombia and in some foreign countries, and declarations of income; these are examined physically and, when this procedure has been completed, are transmitted to the Public Prosecutor's Office with a view to the application of Act No. 793 of 2002 or of the Termination of Ownership Rights Act. A similar request may be made by prosecutors, if deemed appropriate, so that the information may be introduced as evidence in a trial.

1.2 Regarding subparagraph 1 (a) of the resolution, the CTC would appreciate learning whether the Information and Financial Analysis Unit (UIAF) has been provided with sufficient resources (human, financial and technical) to carry out its mandate. Please provide appropriate data in support of your response.

The Colombian Government has endeavoured to allocate sufficient human and financial resources for the operationalization of UIAF, as can be seen from this table:

Body	*Year*	*No. of Staff*	*Amount budgeted (Col$)*	*Amount budgeted (US$)*
Information and Financial Analysis Unit (UIAF)	2002	28	2 178 663 772	831 234
	2003	28	2 409 891 109	919 455

However, UIAF needs technical and financial support from international cooperation in order to strengthen its operational capacity, particularly in the areas of the reception, processing and analysis of information from the new sectors identified by the Financial Action Task Force (FATF) and of information on the prevention and detection of terrorist financing.

1.3 The CTC notes from the third report (at page 9) that UIAF monitored transactions carried out in 2002 by non-profit and non-governmental organizations with a view to identifying behaviour suggesting the existence of money-laundering. In this regard, the CTC notes that activities connected with the financing of terrorism are not necessarily linked to money-laundering as terrorist activities may be financed by funds of a legal origin. The CTC would appreciate learning the procedure followed by UIAF and/or other competent bodies to ensure that the resources collected by charitable, religious and other associations are not diverted to terrorism. How is coordination achieved in this area between the monitoring agency and the other agencies involved in

criminal investigation? Are there procedures to deal with requests from other Member States to investigate particular organizations that are suspected of having terrorist links?

The UIAF system for receiving and classifying data, analysing financial information and reconciling such information with field-level intelligence from other competent authorities, both national and international, is one of the Colombian Government's primary tools for preventing and detecting money-laundering. To that end, UIAF analyses information received from all sectors which are required to submit Suspicious Transaction Reports (STRs) and ensures periodic follow-up to the information on exchange and cash transactions in order to identify any unusual behaviour by natural and/or legal persons (such as non-profit organizations, charities, religious and other groups) which is contained in its databases.

This system is capable of identifying information which may be related to the financing of terrorism, which is transmitted to the competent national or international authorities for all relevant purposes.

Lastly, UIAF is fully prepared to cooperate with other competent national and international authorities with a view to ensuring performance of the actions called for in the Security Council resolutions concerning the financing of terrorism.

1.4 Regarding the implementation of subparagraphs 1 (a) and (d) of the resolution, the CTC would be grateful if Colombia would provide statistics on the number of cases where sanctions were imposed on financial and non-financial institutions for providing support to terrorists or terrorist organizations. Do authorities in Colombia audit financial institutions to verify compliance with requirements to submit suspicious transaction reports? Are foreign exchange bureaux and remittance agencies routinely audited? How often are financial institutions subject to such audits? In this regard, please also outline any legal provisions and administrative mechanisms in place to prevent the use of the black market peso exchange for criminal purposes, in particular for the financing of terrorism.

According to Colombia's Superintendence of Banks, no sanctions have thus far been imposed on any financial institution in connection with the financing of terrorism. To date, the Superintendence has received no evidence to demonstrate or suggest that any financial entity operating in Colombia is providing support, or is interested in providing support, to terrorist or terrorist organizations.

The Superintendence verifies fulfilment of the obligation to report suspicious transactions. It also carries out inspection visits to foreign exchange bureaux. Colombia has no remittance agencies; this function is performed by intermediaries on the exchange market.

With respect to audits of financial institutions, the Superintendence makes every effort to ensure that it visits each entity under its supervision at least once a year. However, under current regulations, these entities are required to carry out their own internal audits on an ongoing basis with a view to the prevention of criminal activities (money-laundering and terrorism). The legal provisions applicable to the entities monitored by the Superintendence are articles 102 to 106 of the Organic Statute of the Financial System, disseminated through Circular No. 025 of 2003.

With regard to the administrative mechanisms in place, Colombia has signed agreements with the superintendences of banking of Panama, Ecuador, Costa Rica, the Dominican Republic, Peru, the Cayman Islands and Venezuela with a view to ensuring unified supervision of the exchange of information necessary to the issuance or review of operational authorizations, monitoring of border establishments and efforts to combat money-laundering.

The Superintendence carries out inspections, primarily of an accounting nature, in order to prevent entities under its supervision and monitoring from using the black market peso exchange. In addition, UIAF submits a quarterly report to the Superintendence of Banking, in which it lists financial institutions which fail to file suspicious transactions reports (STRs) on money-laundering; on the basis of this report, the Superintendence carries out the tasks relating to its mandate.

1.5 It is not clear to the CTC from the third report (at pages 9, 10 and 11) whether the legal provisions which oblige financial intermediaries to identify their clients and to report suspicious transactions to the relevant authorities are applicable to lawyers, notaries and other independent legal professionals, as well as accountants, when they prepare for or carry out transactions for their clients that concern the following activities:

- **Buying and selling real estate;**
- **Management of a client's money or other assets;**
- **Management of bank, savings or security accounts;**
- **Organization of contributions for the creation, operation or management of companies; or**
- **Creation, operation or management of legal persons or arrangements and buying and selling of business entities.**

In this regard, please outline the relevant provisions in place. In their absence, please indicate the measures that Colombia intends on taking in order fully to meet the requirements of this aspect of the resolution.

UIAF is aware of the importance of increased monitoring of the sectors mentioned in the question. During the first quarter of 2003, it carried out a series of activities such as requesting the Executive Service of the Commission for the Prevention of Money-Laundering and Monetary Offences (SEPBLAC) of Spain, the Financial Crimes Enforcement Network (FinCEN) of the United States of America and the Agency for the Coordination of Information and Action against Clandestine Financial Networks (TRACFIN) of France to provide information on the use of STRs for accountants and lawyers in those countries, meeting with the Central Board of Accountants in the Ministry of Education in order to explore the possibility of enacting a regulation which would require accountants to file such reports, and working with the Ministry of the Interior and the Ministry of Justice to decide how to introduce STRs into the two new sectors mentioned above.

In light of the problems which countries have encountered in implementing this type of monitoring for lawyers and accountants in accordance with international standards, it is clear that technical support must be sought from countries which have successfully designed and implemented regulations for the prevention and detection of money-laundering in the aforementioned sectors with a view to the

exchange of experience. Such a regulation exercise must be participatory and must involve representatives of the two professions and of the competent national bodies.

In late August 2003, Colombia included this issue in the cooperation projects which it submitted to the Inter-American Drug Abuse Control Commission (CICAD) of the Organization of American States (OAS) Group of Experts on Money-Laundering in the context of follow-up to implementation of the recommendations of the second round (2001-2002) of the Multilateral Evaluation Mechanism (MEM).

1.6 Regarding the effective implementation of subparagraph 1 (a) of the resolution, the CTC would be grateful for information on the criteria which Colombia has established in order to identify unusual and suspicious transactions (page 7 of the first report), with a view to enabling the agencies and professionals engaged in financial transactions to report such transactions to the relevant authorities. In this regard, the CTC would also appreciate receiving the number of suspicious transaction reports (STRs) received by UIAF and other competent authorities, with particular regard to STRs from:

– Banks;

– The insurance sector;

– Money remittance/transfer services;

– Foreign exchange bureaux; and

– Other financial intermediaries (for example, notaries, accountants, etc.)

Please further indicate the number of STRs analysed and disseminated, as well as the number of those that have led to investigations, prosecutions or convictions.

The criteria which Colombia has established, and which institutions subject to its supervision and monitoring must apply, are set forth in External Circular No. 025 (2003):

2.3.1.3 Detection of unusual transactions

2.3.1.3.1 Definition of an unusual transaction

- **In the case of walk-in customers, transactions are unusual if their scope or characteristics bear no relation to the customer's occupation.**
- **In the case of account-holders, transactions are unusual if their number, amount or specific characteristics exceed the normal parameters established for the market in question.**

2.3.1.3.2 Minimum requirements for procedures aimed at detecting unusual transactions

An Integrated System for the Prevention of Money-Laundering (SIPLA) that does not enable the monitoring body to determine whether a transaction should be considered unusual according to the definition provided above is not adequate.

Therefore, the SIPLA must include procedures designed to detect unusual transactions by its walk-in customers and account-holders. The criteria applicable to the other mechanisms and instruments mentioned in this section should be used in adopting such procedures.

2.3.1.4 Determination of suspicious transactions

2.3.1.4.1 General rule

By comparing the operations identified as unusual with the information it has concerning the customers and markets, the entity should be able to determine whether or not a transaction is suspicious.

Nonetheless, the entity may regard as suspicious transactions which, although they fall within the parameters of the customer's financial profile, are so irregular or out of the ordinary as to give it good reason to believe that they are not merely unusual.

In the case of storage facilities, procedures for determining suspicious transactions should also cover goods which are imported and stored on the facility's premises if, according to the relevant SIPLA criteria, it is presumed that they may be intended for use in criminal activities.

2.3.1.4.2 Minimum requirements for procedures aimed at detecting suspicious transactions

The SIPLA must enable the entity to determine when a client transaction is suspicious.

If it is to function properly, the SIPLA must enable the entity to effectively analyse and assess unusual client transactions so that it can establish whether a transaction is suspicious and take the appropriate decisions, in accordance with its internal policies.

The goal of such analysis is to detect transactions that may be linked to criminal activity and then decide how to proceed in each case.

The entity will be adequately protected against laundering if, inter alia, it has effective procedures for detecting suspicious transactions and informing the competent authorities.

With respect to the procedures for detecting suspicious transactions, it is vitally important that the entity should realize that it is duty bound to inform the authorities immediately of any such transaction that may come to its attention.

It is important to stress that, although the entity may, in accordance with its internal policies, pursue legal remedies in order to break its contractual link with a client who has carried out a transaction considered to be suspicious under the terms set out above, it will not be regarded as having failed to comply with laws on the control and prevention of money-laundering, simply because it maintains such a link with the client. Its duty in this respect is to immediately inform the competent authority of the transaction.

(...)

3. Rules on reports emanating from money-laundering prevention and control

The SIPLA designed by each entity must include an appropriate system for generating internal and external reports that ensure the proper functioning of its own risk-management procedures, as well as compliance with the legal obligation to collaborate with the authorities responsible for combating the crime of money-laundering.

In this regard, the following are the reports that every entity must prepare for inclusion in its SIPLA.

3.1 Internal reports

3.1.1 Internal report on unusual transactions

Each entity must include, in its SIPLA, procedures to ensure that all officials charged with detecting unusual transactions report any such transaction to the office responsible for their analysis. An effective report will include the reasons why the transaction is considered unusual.

3.1.2 Internal suspicious transaction report (STR)

Since procedures for detecting suspicious transactions must be permanently in place, the SIPLA must include procedures for submitting reports immediately, in writing, to the competent official or authority.

3.2 External reports

3.2.1 External suspicious transaction report (STR)

Once the suspicious transaction has been detected, a report must be sent immediately and directly to the UIAF, as indicated in the corresponding form.

For the purposes of the STR, regulated institutions need not be certain that the transaction is criminal, nor is it necessary for them to ascertain the nature of the offence or for the funds under their management to be the proceeds of such activities. The only requirement is that the entity concerned find the transaction suspicious.

Since the STR is not a criminal charge, it does not require a signature.

According to the law, reports submitted by bonded warehouses regarding suspicious transactions involving stored substances must be sent to the chemical control unit of the narcotics division of the National Police, and must include the main grounds for suspicion.

3.2.2 Monthly report on absence of suspicious transactions

If, during the course of a particular month, the regulated entities have not detected any suspicious transactions, they must submit a report to this effect, to the UIAF, within the first 10 days of the following month.

3.2.3 Cash transactions report

Regulated entities must send to the UIAF a monthly report showing the number of cash transactions, as defined in paragraph 2.3.2.5 above, using the appropriate form (see annex 3), in accordance with the instructions provided on the form.

When a network-user contract is agreed between a credit institution and an entity authorized to act under Act No. 389 of 1997 and Regulatory Decree No. 2805 of 1997, the report must be sent by the entity that uses the network, and in whose name the cash transactions were made, in accordance with the instructions provided on the corresponding form, since such transactions were carried out, not by the entity providing its branch network, but between the client and the entity using the network.

3.2.4 Multiple-transactions report

The multiple transactions referred to in paragraph 2.3.2.6, above, must be reported to the UIAF, using the appropriate form (see annex 3), in accordance with the instructions provided on the form.

3.2.5 Report on exonerated clients

In accordance with article 103, paragraph 2, of the Organic Statute of the Financial System, EOSF (Decree No. 663 of 12 April 1993), regulated authorities are under an obligation to submit monthly reports indicating the names and identities of any client who has been exonerated.

This information should be sent to the UIAF, within the first 10 working days of the following month, using the appropriate form. Updated information must be submitted within the same time period.

For the purposes of the aforementioned article, entities must submit the names and identities of any newly exonerated clients and any who ceased to be exonerated during the previous month. If there is nothing new to report, this must also be stated, in accordance with the instructions provided on the aforementioned form.

3.2.6 Report of foreign-exchange firms on exchange transactions

Foreign-exchange firms must submit to the UIAF a report listing all foreign exchange transactions carried out during the previous month, in accordance with the instructions provided on the appropriate form (see annex 5).

With respect to the criteria established by Colombia for reporting suspicious transactions, please note the following list of regulated sectors and the domestic laws governing their activities:

Yes	*No*	*Sector regulated*	*Law title and articles*
x		Financial institutions[1]	Organic Statute of the Financial System, EOSF (arts. 102 to 107, Decree No. 663 of 1993); Circular No. 25, of 21 February 2002; Circular No. 025 (2003), of the Superintendence of Banks.
x		Foreign-exchange bureaux	Organic Statute of the Financial System, EOSF (arts. 102 to 107, Decree No. 663 of 1993); Circular No. 25, of 21 February 2002; Circular No. 025 (2003), of the Superintendence of Banks; External resolution No. 8 (2000), of the Bank of the Republic (Regulations on foreign exchange transactions); Resolution No. 3 (2002), issued by the Executive Board of the Bank of the Republic; External Decree No. 088 (1999) of DIAN.
x		Stock exchange	Organic Statute of the Financial System, EOSF (arts. 102 to 107, Decree No. 663 of 1993); External circular 004 (1998), of the Superintendence of Securities.
x		Insurance firms	Organic Statute of the Financial System, EOSF (arts. 102 to 107, Decree No. 663 of 1993); Circular No. 25, of 21 February 2002; Circular No. 025 (2003), of the Superintendence of Banks.
x		Casinos	Circular No. 81 (1999), of the Superintendence of Health.
x		Notaries	Decree No. 1957, of 17 September 2001; Administrative instruction 02-01, of the Superintendence of Notaries and Registration, of 14 January 2002.
	x	Accountants and lawyers	
x		Cross-border movements of cash or securities	Resolution No. 8 (2000), of the Bank of the Republic (Regulations on foreign-exchange transactions); Resolution No. 3 (2002), issued by the Executive Board of the Bank of the Republic.
x		Others (cooperative firms and customs intermediaries)	External circular No. 0007 (2003), of the Superintendence of the Solidary Economy; Circular No. 170 (2002) of DIAN.

It is important to stress that each of the aforementioned laws sets out specific guidelines for suspicious transaction reports (STR) in each sector, and that more detailed provisions are provided in the internal rules established by each financial institution. Furthermore, the UIAF has published guidelines for reporting institutions, aimed at improving the quality of information provided in STRs, which are essential to the development of the system for preventing and detecting money-laundering in Colombia (see document attached as annex: "Minimum Information Requirements for STRs: Ideas"). [2]

During 2003, a total of 11,726 STRs were received, representing a decline compared with the 2002 total. Note that the strategy identified by the UIAF to improve its operational effectiveness was to improve the quality of STRs submitted by reporting entities. The UIAF therefore held a number of feedback sessions, with reporting entities; inspection, monitoring and control entities, and compliance officers from the financial and insurance sectors; as well as the various unions involved, on the theme: "Minimum Information Requirements for STRs: Ideas", in order to inform entities of the requirement to prepare STRs in line with the guidelines described by the UIAF during the sessions (see table 1).

Table 1
Suspicious transaction reports by reporting entity

Type of institution		*2002*	*2003*
Customs intermediaries		83	27
Financial institutions[1]	Banks	3 040	3 442
	Insurance firms	75	196
	Foreign-exchange bureaux	7 984	6 677
	Others	945	1 245
Total financial institutions		**12 044**	**11 560**
Notaries		22	2
Public institutions		57	45
Cooperative entities[2]		8	2
Securities brokers		1 271	85
Others		3	5
Grand total		**13 488**	**11 726**

[1] Includes full-time foreign-exchange bureaux and senior-level cooperatives;
[2] Includes only savings and loan cooperatives and multi-service and integrated cooperatives with savings and credit units.

[2] Importance and level of urgency: Includes knowledge of client, operational procedures and links with third parties.
Data: Description of reported transactions.
Explanation: Detection methods and information of interest.
Alerts: Evidence detected by each STR.

It is important to note that once the STRs have been entered into the UIAF database, they also become part of an internal STR classification system, which facilitates the internal follow-up of actions undertaken regarding the STRs selected for analysis and, if appropriate, the reporting of the information they contain to the competent authorities.[3]

Here it should be stressed that the most important products of the UIAF analysis are the financial intelligence reports compiled for the competent authorities. Once the UIAF has finished collecting and analysing the information relating to the selected STRs, the intelligence reports are prepared and sent to the competent authorities (see table 2).

Table 2
No. of STRs associated with intelligence reports submitted to the competent authorities

	No. of STRs associated with intelligence reports	*No. of intelligence reports submitted to competent authorities*
2002	1 264	44
2003	701	72
Grand total	**1 965**	**116**

Lastly, it must be stressed that it is only since 2003 that the STRs of reporting entities have been evaluated using the new UIAF methodology (with its two key criteria of importance and urgency), which allows information to be processed more effectively, and makes it possible to define the type of transaction that should be addressed as a matter of priority and thus to proceed more rapidly to the collection and analysis of the additional information that accompanies the STR and is then transmitted, in the form of intelligence reports, to the competent authorities. Moreover, according to the National Unit for Termination of Ownership Rights and Suppression of Money-Laundering, of the Office of the Prosecutor-General points out that, as a result of a UIAF report, Case No. 1103L.A. was initiated, leading to seven convictions for the offence of money-laundering involving funds of the drug trafficking and terrorist group, the Revolutionary Armed Forces of Colombia (FARC-EP).

Additional materials: supporting documents.

[3] The classification system is maintained by an analyst who evaluates, one by one, the STRs that are entered into the database on a daily basis. This classification of reports is based on a process that enables rapid processing of transactions deemed to be both important, because of their close relationship with money-laundering, and urgent, because of the amounts involved and the need for the authorities to take immediate action. The system also strives to determine the degree of importance to be attached to the information submitted by the reporting entities, according to its connection with money-laundering, as well as to identify those transactions that must be quickly analysed, due to the significance of the information provided in the report.
The classification generates a set of STRs which are then evaluated by the UIAF evaluation committee, which determines the procedure to be followed by the analysts in the case of each STR. The system also assigns an identity to each selected STR, thereby allowing each report to be monitored, and its progress to be tracked, once it has been entered into the database.

1.7 Within the context of the effective implementation of subparagraph 1 (a) of the Resolution, the CTC would be grateful for an explanation of the rules for identifying persons or entities which maintain bank accounts; on whose behalf a bank account is maintained (i.e. the beneficial owners); or who are the beneficiaries of transactions conducted by professional intermediaries; as well as any other person or entity connected with a financial transaction. Please outline any procedures that enable foreign law-enforcement agencies or other counter-terrorist entities to obtain such information in cases where terrorist links are suspected.

Firstly, it should be noted that, according to Circular No. 25 (2002), issued by the Superintendence of Banks:

> "... terrorism, as defined in the Criminal Code, is a criminal activity. It should therefore be understood that the provisions of article 12 of the Organic Statute of the Financial System, EOSF (*Obligations and Control of Criminal Activities*) also extend to this type of activity, which is why entities regulated by the Superintendence of Banks are required to adopt control mechanisms that are not merely appropriate, but also effective, with a view to ensuring that their operations are not exploited by criminal organizations to conceal illicit assets and funds that may be used for terrorist activities".

As the above excerpt clearly shows, the know-your-client regulations (identification of persons or entities with bank accounts) for the prevention of criminal activities (money-laundering) may be extended to the funding of terrorism.

The regulations explicitly state that entities must design and implement a SIPLA, whose mechanisms and instruments must include the **"know-your-client" mechanism**.

They go on to state that, for the purposes of a regulated entity, the term "client" covers *any individual or entity with whom a relationship* of a legal nature (i.e. regulated by law, e.g. relationships concerning social security and retirement benefits), or of a commercial nature, is established and maintained, for the delivery of any service or the supply of any product deriving from its activities.

The *minimum* information required for adequate knowledge of the client is as follows:

- The full identity of the person hoping to enter into a relationship with the bank and the obligation to verify that identity. Colombia does not allow anonymous or numbered accounts;
- The potential client's occupation;
- The nature and amount of the potential client's income and expenditures;
- The nature and amount of the client's transactions and operations with the entity.

The mechanism must provide the regulated entity with:

- Information enabling the entity to see whether the nature of the client's transactions is commensurate with his occupation;
- The ability to monitor its clients' operations on a continuous basis;

– Data and supporting documents that make it possible to analyse unusual client transactions and identify suspicious transactions.

It is important to note that the "know-your-client" process *begins as soon as the person applies for an account* with the bank by submitting an account application form. This form must be properly processed. The bank is legally required to verify the information provided on the form and to keep it up to date.

– The bank must stipulate in its contracts that *the client has an obligation* to update, on an annual basis, all data subject to change, and to provide all required supporting documents, according to the respective product or service;

– Information that is not updated **or that, once updated,** cannot be confirmed, should alert the entity to the fact that there may be a problem;

– The bank must implement clear procedures for the proper analysis, filing and preservation of client information, so that such information may be easily and quickly accessed by crime-prevention officials and by the authorities should they so request;

– Except where explicitly stated by the law, the know-your-client requirement means that potential clients will be interviewed in person before a relationship is established. A documentary record of the interview must be kept, indicating the place, date and hour, as well as the outcome. Under no circumstances can the interview be waived.

– When taking the final decision as to whether or not to establish a relationship with the potential client, the bank must pay special attention to questions such as the **overall** volume of funds the client **manages**, their country of origin (whether the country complies with the minimum know-your-client standards), the applicant's position and profile (the bank should determine inter alia whether or not the client is a resident), whether transactions will be conducted via electronic or similar means and whether the individual manages public funds).

– Since "know-your-client" procedures constitute minimum international standards, they should be included in the manuals of subsidiary entities abroad.

– The bank should adopt stricter procedures for establishing business relations with customers and monitoring the transactions of persons who, because of their profile or functions, might be exposed to greater risks of money-laundering. To that end, the entities should undertake closer monitoring of the transactions performed by persons who, because of their position, handle public funds, are vested with some degree of public authority or enjoy public recognition.

The foregoing requirements do not make it legally possible for anyone to use someone else's name to hide his/her identity and status as a bank account holder.

With regard to persons who are the beneficiaries of transactions conducted by other persons, as regards the **identification of beneficiaries**, the regulations (annex 1.1.2 on special rules for filling in forms) state the following:

- When, because of the nature or structure of a contract at the time of establishing a business relationship with a customer it is not possible to know the identity of other persons who are linked to the entity as clients, as would happen in the case of beneficiaries of certain insurance and trust contracts whose identities sometimes only become manifest in the future, it is clear that information on them should be secured at the time when they are specified;

- When a product is set up through an agent, a duly notarized power of attorney in writing bearing the signature and fingerprint of the beneficiary should also be required. Should there be several beneficiaries, their names should appear on the power of attorney, which must be signed by one of them;

- With respect to time certificates of deposit and bonds, when they are not endorsed prior to the date of payment, or the beneficiary is different from the subscriber, the signature and fingerprint of the person encashing the certificate of deposit or bond should be obtained, together with a photocopy of his/her identity document;

- The beneficiaries of regular and special common investment funds are not required to make voluntary declarations as to the origin of assets and/or funds when the beneficiaries are different from those involved in the transaction or are in partnership with them;

- In the area of insurance contracts and capitalization;

- When the insured, policy holder or beneficiary is different from the payee or subscriber, information concerning them must be gathered when the claim is filed, upon maturity and payment of the policy, cancellation thereof, payment of the lottery winnings or submission of an application for a loan on the policy. Should the insured, policy holder and/or beneficiary fail to provide the information required under the present chapter, the transaction shall be considered unusual.

Cash transactions are also subject to oversight; the entity subject to oversight (article 103 EOSF) is required to provide, on forms specifically designed for that purpose, information on its cash transactions in legal tender or foreign currency in excess of such amounts as the Superintendence of Banks may set from time to time.

Such forms shall contain, at the very least, the following information:

(a) The identity, signature and address of the person physically conducting the transaction. When registration is done electronically, the signature shall not be required;

(b) The identity and address of the person on whose behalf the transaction is being carried out;

(c) The identity of the beneficiary or payee of the transaction, if any;

(d) The identity of the account affected by the transaction, if any;

(e) The type of transaction in question (deposit, withdrawal, encashment of cheque, purchase of cheque or certificate, cashier's cheque or payment order transfer or other);

(f) The date, place, time and amount of the transaction.

Furthermore, as noted above, under current legislation UIAF may collect, process, analyse and communicate information contained in STRs. Such information may be related to natural and/or legal persons who carry out activities relating to money-laundering that may, in turn, be used to finance international terrorist organizations.

Accordingly, it should be noted that, under the provisions of current legislation, a competent authority in our country may require the identification of natural and/or legal persons who may be holders of bank accounts connected to terrorist financing activities, as may a financial intelligence unit of another country pursuant to the modalities for the exchange of information developed by the Egmont Group.

1.8. In relation to money-laundering and the financing of terrorism, the CTC would be grateful to receive an outline of any special strategy that Colombia may have developed with a view to enabling its investigative agencies effectively to prevent resources from being transferred to terrorists (e.g. the under-invoicing of exports and the over-invoicing of imports, manipulation of high value goods like gold, diamonds etc.).

Aware of the need to combat terrorism and in view of the complexity of the operations involved, Colombia has designed a comprehensive strategy that calls for the participation of various agencies. With regard to the Directorate of National Taxes and Customs (DIAN), External Circular No. 170 of 10 October 2002 established the procedures to be followed by users of customs and foreign exchange services in order to deter, detect, control and report suspicious transactions that may be associated with money-laundering.

In that regard, customs brokerage companies, harbour companies, user-operators and industrial and commercial users of free zones, shipping companies, international cargo agents, postal traffic and urgent consignment brokers, messenger companies, permanent customs users, export-oriented users, other ancillary customs operators and foreign currency exchange professionals are required to report suspicious transactions that may be associated with money-laundering.

The circular indicates the procedure that users of customs and foreign exchange services must follow in order to deter, detect, control and report suspicious transactions that may be associated with money-laundering. Firms that know their clients and the market should develop comprehensive measures to prevent and control money-laundering and should require the reporting of suspicious transactions, that is to say transactions which, due to their number, quantity, frequency or characteristics, may give reason to suspect that certain assets and services derived from criminal activities are being hidden, disguised, protected, maintained, invested, acquired, converted or transported or that transactions or funds related to such criminal activities are being given the appearance of legality.

The circular reiterates, for information purposes, the requirement under Circular DCIN 30 of 2002 and current Circular 83 of 2003 of the Board of Governors of the Bank of the Republic that all foreign currency exchange professionals record, on a form specifically designed for that purpose, information on cash transactions of US$ 500 or more. Such information must always be available to the various authorities. Trade secrecy may not be invoked against specific requests for information by the judicial authorities, tax, customs and foreign exchange oversight authorities and, of course, by the Money-Laundering Investigation Unit.

Circular No. 0170 of 2002 adopted an Integrated System for the Prevention of Money Laundering (SIPLA) for entities under the control of DIAN in order to establish appropriate and sufficient control measures designed to prevent any foreign exchange or external trade transaction being used to hide, manipulate, invest or otherwise use money or other assets derived from criminal activities, or to lend an appearance of legality to transactions and assets associated with such activities.

To that end, it provides that each of the entities subject to DIAN oversight should develop a manual of procedures that would at least regulate the following:

- Knowledge of the customer and of the market;
- Internal coordination channels for promptly addressing the requirements of the authority or taking timely action on suspicious transaction reports;
- Controls to ensure compliance with the rules contained in the manual;
- Consultation and reporting mechanisms for employees of the enterprise in connection with their anti-money-laundering activities;
- Use of technological tools consistent with the nature and size of the enterprise;
- Internal training programmes;
- Functions and category of the enforcement official, auditing and financial auditing;
- Responsibilities concerning detection and internal reporting of unusual and suspicious transactions;
- Penalties and punishment for failure to observe procedures;
- Retention of records and documents.

This manual shall be updated in line with the needs of the entities supervised and changes in regulations.

The circular under discussion indicated the requirement for foreign currency exchange professionals to adopt a client identification profile containing the following elements:

- Given and surnames or trade name of the client;
- Identification document number;
- Legal residence and residential address;
- Given names, surnames, identification of partners and legal representatives;

- In the case of corporations, name, identification and address of the legal representatives;
- Economic activity;
- Registered capital stock;
- Origin of funds, identifying the medium and instrument of payment, the issuing or paying entity and the city where it is located.

Lastly, this Circular provided for and set out the duties of the enforcement official, the person designated by the persons subject to DIAN oversight and charged with verifying the proper and timely implementation of Circular No. 0170 of 2002. Said enforcement official also acts as the direct liaison between the user and the Customs Control and Foreign Exchange Control subdirectorates of the Directorate of National Taxes and Customs for the purpose of meeting the requirements of DIAN and ensuring that the instructions of the oversight entity are carried out.

One of the functions of DIAN, acting through the Foreign Exchange Control Subdirectorate, is to plan, direct, monitor and evaluate activities relating to the investigation, determination, application and settlement of sanctions for violation of the foreign currency regulations subject to the entity's jurisdiction. It is also responsible for planning, directing, controlling and overseeing the implementation of foreign currency regulations in the area of the import and export of goods and services and related expenditures, financing in foreign currency of imports and exports, and **underinvoicing and overinvoicing of such transactions**; and other transactions under the foreign exchange regulations that are not subject to the oversight and control of other authorities.

Under Decree No. 1074 of 1999, the following shall be deemed offences:

- Failure to channel through the foreign exchange market the real value of transactions actually carried out. Offenders shall be fined 200 per cent of the difference between the actual value of the transaction established by DIAN;
- Channelling through the foreign exchange market as imports or exports of goods or as funding for such transactions amounts of money not regularly derived from the aforementioned transactions. Offenders shall be fined 200 per cent of the amount thus channelled;
- Channelling through the foreign exchange market of an amount higher than that recorded in the customs documents; offenders shall be fined 200 per cent of the difference between the amount channelled and the amount recorded in customs documents;
- Channelling through the foreign exchange market the value stated in customs documents where such value is higher than the actual value of the transaction; DIAN shall fine offenders 200 per cent of the difference between the value channelled and the actual value of the transaction.

Furthermore, article 1 of Resolution 01483 of 3 March 2003 of the Director General of DIAN provides that residents in the country who buy and sell foreign currency professionally, in accordance with article 6 of External Resolution No. 1 of 14 February 2003 of the Board of Governors of the Bank of the Republic, shall submit to the Foreign Exchange Control Subdirectorate a copy of the certificate

from the register of companies in order to enter their information into a database of the Foreign Exchange Control Subdirectorate to determine the universe of professionals dealing in the purchase and sale of foreign currency and travellers' cheques subject to DIAN oversight and control, as well as the persons who engage illegally in such activities because they do not meet the requirements.

Lastly, article 2 of External Resolution No. 8 establishes the following prohibition:

> *"Article 2. Sums larger or less than the sums actually received may not be channelled through the foreign exchange market, nor may amounts higher than those authorized be transferred abroad.*
>
> *The competent authority shall investigate any foreign exchange declaration containing false, incorrect, incomplete or distorted information ..."*

Article 3 establishes the following obligation:

Article 3. Residents in the country who carry out foreign exchange transactions shall keep the documents attesting to the amount, characteristics and other terms of the transaction and the origin or beneficiary of the foreign currency, as the case may be, for a period equal to the period of expiration or limitation for the foreign currency transaction that is punishable for being in breach of the foreign exchange regime.

Such documents shall be submitted to the control and oversight entities responsible for the enforcement of the foreign exchange regime upon request, or within the context of administrative investigations undertaken to determine whether foreign exchange offences have been committed.

The Administrative Department of Security (DAS) carries out investigations into the financing of terrorism and, in view of the fact that the methods of operation of terrorist organizations vary widely, each case is dealt with on its own merits, with close attention being paid to new methods of managing resources and new trends in organized crime.

1.9. Regarding subparagraph 1 (c) of the Resolution the CTC notes Colombia's reference (at pages 4, 5 and 7 of the third report) to Act No. 793 establishing the rules governing termination of ownership rights, as well as to article 67 of the Code of Criminal Procedure establishing rules of criminal confiscation. In this regard the CTC would like to point out that these procedures are applicable only to the assets "used as a means or instrument for the commission of unlawful activities, are intended for such activities or are the object of the offence". The use of the criminal confiscation procedure is also subject to the finding of criminal liability on the part of the owner of the assets. In this regard, the CTC notes that subparagraph 1 (c) of the Resolution requires the freezing, without delay, of the funds or other assets not only of those who commit or attempt to commit terrorist acts, or those who participate in or facilitate the commission of terrorist acts, but also the funds or other assets:

- **Of entities owned or controlled directly or indirectly by such persons;**
- **Of persons and entities acting on behalf of, or at the direction of such persons and entities;**
- **Derived or generated from property owned or controlled, directly or indirectly by such persons and associated persons and entities.**

In this regard, please outline the legal provisions and administrative procedures in place to freeze, without delay, the assets, economic resources or financial or other related services if these are:

- **Controlled directly or indirectly by terrorists, those who finance terrorism, or terrorist organizations;**
- **Available to terrorists, those who finance terrorism or terrorist organizations whether wholly owned or owned jointly with others;**
- **Owned by persons and entities acting on behalf of, or at the direction of terrorists, those who finance terrorists and terrorist organizations;**
- **Associated with terrorists, those who finance terrorism and terrorist organizations, persons and entities.**

The last category may include, for example, persons providing terrorists and their organizations with logistical support and medical treatment, as well as the relatives of terrorists who receive material benefits for terrorist acts such as suicide attacks.

Regarding the effective implementation of subparagraph 1 (c) of the Resolution, the CTC also notes from the third report (at page 8) that Colombia does not recognize any list of persons, groups or entities involved in terrorism and terrorist financing and proscribed by other States or international organizations (other than the lists issued pursuant to Security Council resolutions 1267 (1999) and 1333 (2000)), unless the information about those included in the list "is accompanied by objective information pointing to the illicit origin or intended use of the assets". In this regard the CTC notes that current Colombian legal provisions do not allow for the without delay freezing of funds, that are suspected of being linked to terrorism, but which have not as yet been used to commit a terrorist act. The CTC also notes that existing procedures referred to by Colombia allow for the implementation of the requirements of the Resolution only in part, that is only in the course of criminal investigation and prosecution. In this regard please outline steps Colombia intends to take fully to meet this aspect of the Resolution.

In view of the need to freeze immediately the assets of terrorist organizations and those engaged in narcotics trafficking or organized crime, the National Unit for Termination of Ownership Rights and Suppression of Money-Laundering of the Office of the Prosecutor-General requested the Congress to include in Act No. 793 of 2002, which governs the termination of ownership rights, an article that would allow law enforcement officials to designate assets in the initial phase of the termination process, i.e., prior to the formal start of the proceedings; this exceptional authority is set forth in the following provision:

> "**Article 12. Initial phase**. *The prosecutor assigned to try the termination of ownership case shall initiate ex officio or as a result of information provided to him under article 5 of the present Act, the investigation, with a view to identifying assets against which action could be brought in accordance with the grounds set forth under article 2.*
>
> *Under this phase, the prosecutor may order precautionary measures or request the competent judge to adopt such measures, as appropriate, which shall include suspension of the power of disposal, distraint and attachment of assets.*

money on deposit in the financial system, securities and returns thereon as well as the order not to pay such returns where it is impossible to physically seize the securities ..."

As to the possibility of including in our legislation an administrative measure for freezing without delay the assets, economic resources or financial products derived from terrorism, the National Unit for the Termination of Ownership Rights and Suppression of Money-Laundering of the Office of the Prosecutor General wishes to point out that Colombia first has to assess the technical implications of its applicability since, although our country has welcomed international recommendations in that regard, a measure on the freezing of assets must be consistent with the constitutional and legal system for the protection of fundamental rights set forth in our political charter, insofar as the current trend, as indicated in the constitutional jurisprudence, is to require that restrictions on property rights be imposed through legal channels and only on very few and special occasions can this be done through the administrative channel.

It should also be noted that all the scenarios whereby the confiscation measure mentioned in the said article can be invoked are feasible through the termination of ownership rights procedure, whenever a link can be established between the property in question and the illicit activity suspected or anticipated, given the reality of the ownership rights termination procedure. Such a link will, in our view, determine whether a precautionary measure can be taken with regard to a particular property. In our constitutional and legal system, it is not enough to allege that an asset is the property of a presumed terrorist, since that would put us in a situation of property confiscation, which is expressly prohibited by article 34 of the Constitution.

1.10 The CTC notes from the supplementary report (at pages 4 and 5) that all criminal investigations with regard to the financing of terrorism in Colombia dealt only with Colombian terrorist groups. Please outline the procedures as well as the evidentiary requirements used to proscribe foreign terrorist organizations (other than those listed by the Security Council). Please also provide any available data regarding the number of such organizations, and/or any corresponding examples. How long does it take to proscribe a terrorist organization on information supplied by another State?

1.11 The CTC notes from the supplementary report (at page 3) that operation of "informal" banks in Colombian territory is forbidden. In order to ascertain the enforcement of this prohibition, the CTC would appreciate receiving an outline of the administrative mechanisms that have been put in place to prevent informal money/value transfer systems from operating and from being used for the purpose of financing terrorism. Please also identify the authorities in Colombia that are responsible for ensuring that the money transmission services, including informal money or value transfer systems are in compliance with the relevant requirements of the Resolution. The CTC would also appreciate knowing how many money remittance/transfer services are registered or licensed in Colombia.

With regard to the first concern, it should be noted that, in order for an entity to be able to transfer money/value abroad and to receive transfers from abroad, it must comply with the requirements set forth in the Act with respect to:

(1) Draft articles of association;

(2) The minimum capital required to establish a company of that nature;

(3) Service records of the persons desiring to enter into partnership and of those who would act as administrators, as well as attestation by those parties as to how competent, eligible and responsible they are to participate in an entity subject to the oversight of the Superintendence of Banks;

(4) Origin of the resources of potential shareholders and soundness of their assets;

(5) The Superintendence of Banks may request the submission of any information that it deems relevant concerning the beneficiaries of the entity's share capital at the time of its establishment and subsequently;

(6) The following persons may not participate as shareholders, directors or administrators in an entity of this nature: (a) anyone who has committed an offence with respect to economic assets, *money-laundering*, illicit enrichment; (b) anyone whose property rights have been terminated; (c) anyone who mismanages or has mismanaged an institution in whose administration they have been involved;

(7) When an administrator of a financial entity is convicted of any of the above-mentioned offences, he shall immediately be relieved of his responsibility; in the case of a partner or shareholder, he shall sell his shares in the entity's capital.

The establishment of the foregoing legal requirements is meant, among other things, to ensure control and continuing oversight over entities engaging in such transactions, to identify and know their owners and administrators and, in so doing, prevent the operation of informal money/value transfer schemes and the use of such schemes for funding terrorism.

Furthermore, it should be noted that if the Superintendence of Banks discovers or is somehow informed that some unsupervised entities are transferring money or securities abroad, it is empowered by law to take punitive measures, including ordering the immediate closure of the entity for illegally engaging in an activity that is subject to State oversight.

With regard to the second concern, the Superintendence of Banks of Colombia is the administrative authority responsible for ensuring that formal money transfer systems are in compliance with the relevant requirements of the resolution.

Lastly, there are 12 foreign exchange bureaux, entities whose main function is to provide money/value transfer services. However, the rest of the entities supervised by the Superintendence (with the exception of trust companies, pension and unemployment funds, bonded warehouses and insurance companies) may also offer international money/value transfer services and are subject to the same regulations.

1.12 The CTC would appreciate receiving a progress report on:

- **The enactment of new legislation to restrict banking secrecy (page 10 of the supplementary report);**
- **The enactment of the draft decree that establishes the procedure to determine refugee status (page 40 of the supplementary report);**

- **The ratification and implementation in domestic legislation of the International Convention for the Suppression of the Financing of Terrorism, with particular regard to the relevant provisions in domestic law that correspond to the measures established in articles 2, 5, 8, 14 and 18 of the Convention;**

- **The ratification and implementation in domestic law of other international instruments relating to terrorism, to which Colombia has not yet become a party, with particular regard to a list of the penalties prescribed for offences created in order to meet the requirements of the Conventions and Protocols.**

Colombian law permits the lifting of banking secrecy following an order from a prosecutor, judge or UIAF.

Under Colombian law, banking secrecy may not be invoked against specific requests for information made by the authorities in the context of investigations within their jurisdiction, pursuant to article 15 of the Constitution and articles 63 of the Commercial Code, 260 of the Code of Criminal Procedure, 288 of the Code of Civil Procedure and 105 of the Organic Law of the Financial System or in such regulations as may supplement, amend or replace them.

With regard to the procedure for determining refugee status, it should be noted that on 30 October 2002, the Government (Ministry of Foreign Affairs) promulgated Decree No. 2450 of October 2002 "which establishes the procedure for determining refugee status, promulgates rules for the Advisory Committee on the Determination of Refugee Status, and adopts other procedures".

This Decree summarizes the procedures to be followed both by applicants for refugee status in Colombia and by the Advisory Committee responsible for determining refugee status.

It first takes into consideration the fact that Colombia is a party to the Convention relating to the Status of Refugees of 1951 and the 1967 Protocol thereto and a signatory to the 1984 Cartagena Convention (which is not binding). It therefore incorporates the definition of refugees contained in the first two instruments.

The Decree provides that a foreigner applying for refugee status must submit in writing to the Office of the Deputy Minister for Multilateral Affairs an application stating his identity, his beneficiaries and their identity documents (if any), his nationality (if any), and the date and manner of his entry to the country. The applicant must give a detailed account of the grounds on which his fear of persecution in his country of origin or residence is based and must also be able to attach such documentation as he deems necessary to substantiate those grounds.

The Decree authorizes the Advisory Committee and its secretariat to conduct interviews, where necessary, with the applicant for refugee status in order to amplify or clarify the version presented in his application. (The usual practice of this Ministry is to conduct a mandatory interview with all applicants for refugee status.)

In cases where there are doubts, inaccuracies or inconsistent data, the Advisory Committee may seek information from foreign authorities through our missions abroad, *always taking precautions so as not to endanger the life and safety of the applicant*. In practice the Advisory Committee relies on databases and additional information in the possession of the Office of the United Nations High Commissioner for Refugees (UNHCR).

Thereafter, the Advisory Committee issues a recommendation to the Minister for Foreign Affairs, which is not binding in respect of the decision to be taken by the Minister. In this case there are considerations apart from the analyses of the inclusionary or exclusionary clauses, such as situations involving national security.

Once the relevant decision has been taken by the Minister for Foreign Affairs, a determination (administrative act) is issued on the application for refugee status, which may be subject to an appeal for reinstatement. (The notification procedure is fully established by our Code of Administrative Disputes.)

If refugee status is granted, the foreigner who benefits from such temporary protection shall have all the rights granted to foreigners in general, as well as the duty to respect and comply with the Constitution, laws, regulations, and the provisions established for foreigners and refugees.

Likewise, if the request is denied, the Decree grants the applicant a period of 30 days in which to leave the country unless his residence is legalized in accordance with the immigration laws in force. *Under no circumstances may a foreigner be returned to a country in which his life is at risk*. In such cases, UNHCR has been requested to assist in arranging his acceptance by a third country.

The decisions taken are conveyed to the Administrative Department of Security (DAS) the Visa and Immigration Unit of the Ministry of Foreign Affairs and UNHCR.

With the promulgation of this Decree, Decree No. 1598 of 1995, which had gaps in the definition of the competencies, membership and functions of the Advisory Committee and other matters relating to the restructuring of the Ministry, as provided for in Decree No. 1295 of 2000, ceased to be in force.

International Convention for the Suppression of the Financing of Terrorism

This Convention was approved by Congress in Act No. 808 of 27 May 2003 and was declared enforceable by the Constitutional Court in Judgement C-037 of 27 January 2004. Consultations are being held currently with the competent authorities in order to perfect the international link. Once this process is complete, the Government will deposit the instrument of ratification with the Secretary-General of the United Nations.

In accordance with article 2 of the Convention, any person commits an offence if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

This means, any person who finances or provides funds for the commission of any of the offences contained in the annex to the Convention, which are the offences envisaged in the terrorism conventions.

In our country there is still no legislation which embodies the international recommendations on combating the financing of terrorism, especially as compared with those set out in Security Council resolutions 1267 (1999) and 1373 (2001) and with the eight additional recommendations of the Financial Action Task Force (FATF), which in turn were adopted by the Financial Action Task Force on Money-Laundering in South America as recommendations to be followed by the countries in the region.

In the meantime, since there is no separate penal category under which the financing of terrorism can be punished, domestic penal legislation consistent with the provisions of the Convention must be adopted. Accordingly, the Office of the Prosecutor-General, in the draft Penal Code to be submitted to Congress for consideration at its next session, includes the financing of terrorism as a new category with the following provision:

> "**Article 345A. Financing of terrorism**. *Any person who directly or indirectly delivers, collects, receives or contributes goods or funds or who carries out any action to promote, organize or maintain illegal armed groups or terrorists, whether national or foreign, or to finance their activities or support their members economically shall be liable to a term of imprisonment of six (6) months to 12 years and a fine of 1,000 to 20,000 times the minimum statutory monthly wage at prevailing rates.*"

Other international instruments

Colombian law defines terrorism and terrorist acts as serious offences, in accordance with the classification contained in the United Nations Convention against Transnational Organized Crime, adopted in Act No. 800 of 2003 and declared enforceable by the Constitutional Court. The formalities for deposit of the instrument of ratification of the Convention are currently under way.

The basic offence of terrorism provides for a term of imprisonment of 10 to 15 years and a fine of 1,000 to 10,000 times the minimum statutory monthly wage at prevailing rates. The offence of acts of terrorism committed in a situation of and in furtherance of armed conflict carries a penalty of 15 to 25 years' imprisonment, a fine of 2,000 to 40,000 times the minimum statutory monthly wage at prevailing rates, and disqualification from exercising civic rights or holding public office for 15 to 20 years.

If the state of alarm or terror is provoked by a telephone call, a tape recording, a video or audio cassette or an anonymous document, the penalty is two (2) to five (5) years' imprisonment and a fine of 100 to 500 times the minimum statutory monthly wage at prevailing rates.

It should be noted that the list of acts set out in the following conventions, both those already in force in Colombia and those whose ratification is still pending, are considered to be grave offences under our law and are punishable by more than four years' imprisonment, which is, as stated earlier, consistent with the definition of such acts contained in the United Nations Convention against Transnational Organized Crime (the Palermo Convention).

- **International Convention against the Taking of Hostages (New York, 17 December 1979)**

This Convention was approved in Act No. 837 of 16 July 2003 and is currently undergoing constitutional review.

Our law punishes hostage-taking, but limits it to that which occurs in the context of an armed conflict, as an element of the category, e.g.:

> "**Article 148. Taking of hostages**. *Any person who, in a situation of and in furtherance of an armed conflict, deprives another person of his liberty, making his liberty or safety contingent upon the fulfilment of demands addressed to the other side, or who uses that person as a shield, shall be liable to a term of imprisonment of 20 to 30 years, a fine of 2,000 to 4,000 times the minimum statutory monthly wage at prevailing rates, and disqualification from exercising civic rights and holding public office for 15 to 20 years.*"

A case such as the taking of hostages on a bus by common criminals in order to obtain payment of a sum of money is classified in our law as kidnapping with extortion, not as hostage-taking. While the penalties for kidnapping with extortion are high,[4] the connotations of hostage-taking are different from that of kidnapping.

Kidnapping is characterized by the fact that after a person is detained, communication takes place with his relatives, employees or other persons of whom a ransom, usually in cash, is demanded in order for the kidnapped person to be freed. In the case of hostage-taking, while it also involves deprivation of liberty, the action typically follows another offence (assault, kidnapping, etc.) and the victims, along with the perpetrators, are under the control of the security forces, who prevent the miscreants from escaping. This means that the hostages are used as human shields to protect the criminals; on occasion, this leads to fatal outcomes for the victims.

The hostage-taking incident that occurred at the Japanese Embassy in Peru is a clear example of such behaviour, the repercussions of which affect the relations between the countries of nationality of the victims and the country in which it takes place.

[4] A term of imprisonment of 20 to 28 years and a fine of 2,000 to 4,000 times the minimum statutory monthly wage at prevailing rates. If the threat of death or injury is added as a means of exerting pressure for the delivery or verification of what is demanded, or if an act which entails grave danger to the public or grave injury to the community or to public health is committed, the penalty increases by one third to one half, from 26 and a half years to 40 years.

Since hostage-taking is an assault on the same legal rights as kidnapping, namely, liberty, free will, and freedom of movement and self-determination, and since the penalty for kidnapping is severe, there is a sense that hostage-taking which occurs outside a situation of armed conflict does not warrant classification as a separate offence, inasmuch as the gravity of the penalty for the category with which it can be associated meets the conditions laid down in the Convention.

- **Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988)**

This Convention was approved by Congress in Act No. 830 of 10 July 2003 and was declared unenforceable due to formal defects by the Constitutional Court in Judgement C-120 of 17 February 2004.

With regard to the supervision in respect of procedural defects which the Court exercises over international treaties and the laws approving them, such supervision, in accordance with article 241 (10) of the Constitution (*Final decision on the enforceability of international treaties and the laws approving them*), is designed to verify the procedure followed during the negotiation and signing of a treaty — that is, to examine the validity of the representation of the Colombian State during the negotiation and conclusion of the instrument and the competence of the participating officials, as well as the preparation of the approbatory law in Congress and the necessary presidential ratification of the draft.

In this particular case, the Constitutional Court stated that the provisions of article 160 of the Constitution had not been complied with in the Senate's handling of the draft law.

- **Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 10 March 1988)**

This Protocol was approved by Congress in Act No. 830 of 10 July 2003; the latter was declared unenforceable due to formal defects by the Constitutional Court in Judgement C-120 of 17 February 2004.

With regard to the behaviour criminalized in this instrument, since there is no specific penal category that contains the elements described in these provisions, article 343, which punishes terrorism if the platform is "seized" for terrorist purposes, would also be applicable; it is also feasible to apply article 354 (Loss or damage to a vessel), since it punishes any person who "*sets fire to or causes the sinking, grounding or shipwreck of a vessel or other floating structure*". In this case the platform may be associated with a floating structure in accordance with the definition contained in the Convention.

Likewise, if injury or death is caused for terrorist purposes, such circumstances are punished in articles 119 and 104 of the Penal Code, respectively. Injury or death can also be treated as generic aggravating circumstances; article 58 (15), concerning circumstances aggravating punishable acts, stipulates that the penalty shall increase where explosives, toxins or other instruments or devices of similar destructive capacity are used in the commission of the punishable acts.

Moreover, attempts to commit such offences, and participation as either accomplice or mastermind, are punished under our penal system.

As to paragraph 2 (c) of the Protocol, the behaviour described therein is punishable under articles 244 and 245 of the Penal Code. It should be noted, however, that if damage to the platform is not caused for terrorist purposes, the behaviour is punished only as aggravated property damage (arts. 265 and 266 of the Penal Code).

- **Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1 March 1991)**

This Convention was approved by Congress in Act No. 831 of 10 July 2003; the latter was declared unenforceable due to formal defects by the Constitutional Court in Judgement C-309 of 31 March 2004.

In this particular case, the Constitutional Court stated that the provisions of article 160 of the Political Constitution had not been complied with in the Senate's handling of the draft law.

While Colombia intends to resubmit the Convention on the Marking of Plastic Explosives for the Purpose of Detection at the next session of the legislature, it is important to note that the Government has already taken legislative steps to include all aspects relating to explosives, including plastic explosives, in our domestic legal system.

Accordingly, in Draft Law No. 174, which is already in the third of the four parliamentary sessions that draft laws must go through in Colombia, Title IV, Chapter II, regulates the classification, marking, traceability and tracking of all explosives, whether domestic or imported, as well as users, sale, responsibility, transport and transfer. Chapter II also regulates substances and raw materials, whether original or capable of being transformed into explosives through processing. Title V, Chapter I, regulates the import and export of explosives, accessories and equipment for their production.

- **International Convention for the Suppression of Terrorist Bombings (New York, 15 December 1997)**

This Convention was approved by Congress in Act No. 804 of 1 April 2003 and was declared enforceable by the Constitutional Court in Judgement No. 1055 of 11 November 2003. Consultations are being held currently with the competent authorities in order to perfect the international link.

Under our law, behaviour such as that described in the Convention is subsumed under the penal category of terrorism (art. 354 of the Penal Code) and is punishable by 10 to 15 years' imprisonment and a fine of 1,000 to 10,000 times the minimum statutory monthly wage at prevailing rates.

The penalty increases where the attack is carried out against a diplomatic or consular mission, from 12 to 20 years' imprisonment and, in terms of the fine, from 5,000 to 30,000 times the minimum statutory monthly wage at prevailing rates.

Furthermore, and in accordance with article 15 of the Convention, the Penal Code punishes conspiracy to commit offences (art. 340), and the penalty is aggravated where this offence is involved. Likewise, the penalty increases by one half for any person who organizes, encourages, promotes, directs, heads, establishes or finances a conspiracy or association for the purpose of committing a punishable act, including the acts described in the Convention.

The acts proscribed by the Convention are also prohibited under the Colombian penal system, in articles 351 (Damage to public infrastructure), 357 (Damage to communications, energy and fuel infrastructure and service components), and 359 (Use or dispersal of hazardous substances or objects) of the Penal Code.

Likewise, injury or death caused for terrorist purposes is punished under articles 119 and 104 of the Penal Code, respectively, also as a generic aggravating circumstance. Indeed, article 58 (15), concerning circumstances aggravating punishable acts, stipulates that the penalty shall increase where explosives, toxins or other instruments or devices of similar destructive capacity are used in the commission of the punishable acts.

Moreover, attempts to commit such offences, and participation as either accomplice or mastermind, are punished under our penal system.

Effectiveness of counter-terrorism machinery

1.13 Effective implementation of legislation related to covering all aspects of Security Council resolution 1373 (2001) requires States to have in place effective and coordinated executive machinery, as well as to create and utilize adequate national and international anti-terrorist strategies. In this context the CTC would appreciate knowing how Colombia's counter-terrorism strategy, described in its reports to the CTC and/or its policy planning (at the national and/or subnational levels) deals with the following forms or aspects of counter-terrorist activity:

- **Counter-terrorist intelligence (human and technical);**
- **Strategic analysis and forecasting of emerging threats;**
- **Analyses of the efficiency of anti-terrorist legislation and relevant amendments;**
- **Border and immigration control, control preventing trafficking in drugs, arms, biological and chemical weapons, their precursors and the illicit use of radioactive materials;**
- **Coordination of State agencies in all of the above areas.**

If possible, Colombia is requested to outline the legal provisions and other administrative procedures, as well as the best practices that are applicable in this regard.

In 2004 Interpol began to disseminate the "orange circular", a mechanism for conveying to the authorities of the 181 States members of the organization information concerning objects, materials, mechanisms or weapons which pose a threat to a country or its institutions. The alert must contain technical specifications concerning high technology elements, their means of operation and the threat they may pose. Information on the effects of and ways of camouflaging hazardous elements and the preventive measures which should be adopted in that regard may also be transmitted.

- Moreover, Colombia's strategy for cooperating in the battle against global terrorism within the *sphere of intelligence* has been based, inter alia, on the following:
  - Continual updating of strategic databases and inventories of national and international terrorist organizations;
  - Monitoring, supervision and follow-up of information, activities, groups and individuals who have or may have links to the offences of terrorism, arms trafficking and means of financing such activities.
- In terms of the *strategic analysis of various modalities of terrorism*, the techniques employed and the forecasting of future scenarios involving the influence and targets of terrorist operations in the country, we are engaged in:
  - Evaluation and analysis of the terrorist actions carried out by Colombian organizations with a view to determining their possible connections with international groups and their possible courses of action and objectives or targets.
- In terms of legislation, analytical studies have been conducted of the feasibility of adopting effective legislative mechanisms to combat terrorism, including the adoption of Legislative Act No. 2 of 2003, in which Congress introduced amendments to four articles of the Constitution, aimed at enhancing the effectiveness of the State's anti-terrorism measures within the framework of respect for the fundamental rights enshrined in the Constitution and the human rights embodied in various international conventions.
- With regard to border and immigration control, control preventing trafficking in drugs, arms, biological and chemical weapons, their precursors and the illicit use of radioactive materials, the following has been accomplished:

The Administrative Department of Security (DAS) exercises, in accordance with Decree Nos. 643 of 2 March 2004 and 2107 of 2001, immigration controls in international airports and border zones; to this end, it has adopted security measures in the past year to protect the safety of passengers and the general public. The Department has offices equipped with information systems such as SIFDAS, with different modules, such as one for requests made by various judicial authorities (orders for arrest and blocks on departure from the country). It also has the Interpol Module and the Lost and Stolen Documents Module (Questioned Documents (QD) System passports and visas), which makes it possible to determine the authenticity of any type of document and to detect those persons who seek to enter or leave the country carrying forged documents. This module is currently in operation at El Dorado Airport.

With the entry into force of Decree No. 1400 of 8 July 2002, which established the Intersectoral Commission on Airport Security pursuant to the Convention on International Civil Aviation, adopted in Colombia in Act No. 12 of 1947, monthly meetings are held at the airports with the participation of all government agencies in order to analyse errors and determine corrective measures. It should be noted that these are preventive efforts aimed at revising the security models that have been implemented.

Several airports have electronic seals connected to the SIFDAS system, which has led to better immigration and security controls for passengers. These airports include: El Dorado in Bogotá, Alfonso Bonilla Aragón in Cali, José María Córdoba in Medellín, and the border areas of Puente de Rumichaca-Ipiales, El Puesto Fronterizo de Paruaguachón-Guajira, and Puente Internacional Simón Bolívar-Cúcuta. Closed-circuit television monitored by DAS personnel has also been installed in both the restricted areas (International Lounge) and the common areas (corridors, entrances) of El Dorado Airport.

In the specific case of Benito Salas de Neiva Airport, the DAS branch, in coordination with Civil Aviation, established a registration system for Colombian and foreign passengers, known as MIGRAR, in which biographical data, destination and photographs are entered and compared with the databases of the SIFDAS module in order to verify judicial matters.

As to border security control preventing trafficking in drugs, arms, biological and chemical weapons, their precursors ar the illicit use of radioactive materials, this is the responsibility of the National Police and the army through their various specialized units.

In coordination with the National Police, an X-ray system donated by the United States Government through the Drug Enforcement Administration (DEA) has been installed at Bogotá Airport. This makes it possible to detect human couriers or drug smugglers who carry illicit substances on their person by ingesting, inserting or attaching them to their bodies.

At El Dorado International Airport, fingerprint readers are used to carry out selective controls of passengers entering and leaving the international lounge, in order to compare the fingerprints with those in existing files and thus prevent substitution of identities and establish the full identity of the traveller.

In order to control trafficking in drugs, arms and contraband, the Department has adopted the following measures:

- Preparation of handbooks and dogs trained in detecting drugs, explosives and foreign currency;
- Assignment of specialized detectives to carry out judicial police functions and conduct ongoing checks of passengers and occasional checks in the international and domestic lounges;
- In the area of currency smuggling, currency seizures are always carried out with officials of the Directorate of National Taxes and Customs (DIAN) and the Fiscal and Customs Police (POLFA).

In order to address the problem of *cross-border crime*, Colombia, Ecuador, Venezuela and Panama have established binational commissions with one another. The Administrative Department of Security belongs only to the binational commission with Panama, through an immigration verification unit within the Subdirectorate of Immigration, but its function is limited to coordinating matters relating to the immigration issues affecting both countries.

With regard to the same immigration issues, the Inter-Agency Group for Analysis of Terrorist Activities (GIAT), composed of officials of the Administrative Department of Security, the Technical Investigations Unit (CTI) and the police, has

carried out exhaustive controls along the maritime borders, in such areas as Urabá and Buenaventura, and at terminal points such as Barranquilla and Cartagena, where they have dismantled some gangs involved in trafficking in arms, ammunition, explosives, and so on, through security agencies providing support to the Directorate of National Taxes and Customs.

The Inter-Agency Group, through the Military Industry Board (INDUMIL), achieved the marking of explosives, such as fuses, safety fuses, pentolite, grenades, Indugel dynamite and ANFO blasting agents, thereby counteracting and controlling traffic in this type of material.

- In terms of ongoing coordination with other State agencies, analyses are conducted constantly in order to forecast and plan problem-solving strategies for averting the emerging security threats with which the country is faced, through weekly intelligence panels.

Channels of communication have been established with international intelligence agencies which are the counterparts to the Colombia agencies, through which information on terrorism and related crimes, such as money-laundering and trafficking in arms and explosives, is exchanged. In addition, courses on the involvement of international organizations at the national level are being organized with representatives of friendly international agencies dealing with terrorism and related crimes.

In Colombia, a number of bodies are involved in border control and immigration, each one with a specific role. The Administrative Department of Security (DAS) verifies the lawfulness of individuals' entry into or departure from national territory while the National Police monitors and conducts searches of individuals and goods in order to prevent the entry and exit of goods in general and the trafficking of drugs, arms, biological and chemical weapons and their precursors and the use of radioactive materials for illicit purposes. It should be pointed out that those tasks are carried out by the Narcotics Force, a specialist professional corps within the National Police. Likewise, the Fiscal and Customs Police (POLFA), a specialist unit within the Directorate of National Taxes and Customs (DIAN), is responsible for preventing the unlawful entry and exit of goods.

DIAN also plays an essential role in the implementation of the monitoring strategy, as it is responsible, inter alia, for formulating and implementing policies enabling the effective customs control of the aforementioned items.

From a legal standpoint, Colombia's import regulations prohibit or restrict the import of the following articles:

- Chemical, biological and nuclear weapons (article 81 of the Constitution);
- Nuclear and toxic waste (article 81 of the Constitution);
- Aldrin, heptachlor, dieldrin, chlordane, camphechlore and their components (article 1 of Decree No. 305 of 1988);
- War toys (article 1 of Act No. 18 of 1990);
- Lindane, alone or in combination with other substances (article 1 of Decision 04166 of 12 November 1997);
- Waste consisting of liquid mixtures of non-chemically manufactured fertilizers and residual and domestic silt (Ministry of Health Decision 7756 of 1981).

A specific prohibition exists regarding arrangements for reshipment, which may not be authorized in respect of chemical substances controlled by the National Narcotics Council (article 306 of Decree No. 2685 of 1999). In addition, for reasons of public, health, animal, plant and environmental safety, DIAN is empowered to prohibit or restrict the passage of goods through customs. It is also prohibited (under article 358 of Decree No. 2685) to take through customs arms, explosives, precursors for the manufacture of narcotics, drugs or narcotics not authorized by the Ministry of Health, nuclear or toxic waste and other goods subject to legal or administrative restrictions.

1.14 In the context of the effective implementation of subparagraph 2 (e), the CTC would appreciate knowing which special investigative techniques may be used in Colombia in relation to terrorism (e.g. interception of communications; electronic surveillance; observation; undercover operations; controlled delivery; "pseudo-purchases" or other "pseudo-offences"; anonymous informants; cross-border pursuits, bugging in private or public premises, etc.). Please explain what these techniques consist of, as well as the legal conditions that govern their use. The CTC is also interested in learning details such as: whether the use of these techniques is restricted to actual suspects; whether they may only be utilized with the prior approval of a court; whether there is a limit to the time period in which they may be used. Could Colombia further indicate whether, and if so how, these techniques could be used in cooperation with another State?

Article 301 of the Colombian Code of Criminal Procedure (Act No. 600 of 2000), governs the interception of communications, which is permissible within the framework of criminal investigations carried out by the judicial authorities, i.e. public prosecutors, judges and magistrates. Telephonic, radiotelephonic and similar forms of communication using the electromagnetic spectrum may be intercepted for the sole purpose of collecting evidence for consideration during judicial proceedings.

The techniques used for interception vary according to the type of communication involved. Once a judicial decision authorizing the interception has been submitted to the fixed-line telephone service provider or, in the case of mobile telephones, the Office of the Prosecutor-General, which is the body currently responsible for scheduling interceptions, the interception itself is carried out by State officials acting as judicial police officers.

For the purposes of the foregoing, once the interception has been physically carried out, the investigators commissioned to deal with the case are responsible for transcribing any communications of interest that will be used during the trial.

With regard to electronic surveillance, observation and bugging in public and private places, Colombian legislation, in particular article 237 of the Code of Criminal Procedure, provides for freedom of proof, on the basis of which the judicial authorities may request such procedures, where appropriate, in order to clarify the facts being investigated. Judicial police officers are responsible for carrying out the procedures with full respect for fundamental rights and, in any event, Colombian legislation (article 235 of the Code of Criminal Procedure) provides for the rejection of evidence that is irrelevant or inadmissible on account of having been obtained unlawfully.

In accordance with article 500 of the Code of Criminal Procedure, controlled delivery and undercover operations may be carried out only in the context of international cooperation on the basis of a formal agreement between the Office of the Prosecutor-General and its foreign counterparts. Although this does constitute a special technique for the collection of information to combat transnational terrorism offences, it has been underused, probably as a result of other countries' ignorance of it.

The use of anonymous informers, known as informants, is the most useful special technique in the fight against terrorism. However, in order to be of use in the context of investigations, their statements must be checked and corroborated by judicial police officials.

The special investigative techniques used in Colombia in respect of terrorism are: static and electronic surveillance, the interception of communications, informants and the collection of supporting documentation. The use of static surveillance and anonymous informants does not require court authorization, since, in accordance with the Colombian Constitution, DAS officials act as members of the judicial police, whose duties include, pursuant to article 314 of the Code of Criminal Procedure, analysing information, monitoring, conducting interviews, taking witness statements and collecting evidence with a view to initiating trial proceedings in respect of criminal offences.

With regard to the interception of communications, the prosecutor seized of the case issues a decision authorizing a judicial investigation lasting no longer than 60 days, during which the investigating official may listen to the communications of the telephone subscriber named in the decision. After the expiration of the 60-day period the investigation may, if necessary, be extended by means of another judicial decision. No judicial order is required to intercept radio transmissions: the investigating official scans the air waves, locates the relevant channel and records its frequency. The frequency is then monitored in order to ascertain how many days per month the channel in question is used.

One of the areas in which progress has been made is technical intelligence. The adroit positioning of equipment for intercepting communications and use of platform aircraft have led to the discovery of narco-terrorist plots and the consequent prevention of terrorist attacks.

Operations relating to international or national crime based on the use of informants may be carried out by Interpol with the support of accredited partners in Colombia, which ensures more rapid, reliable and efficient communication. Within the framework of reciprocal collaboration with neighbouring countries, the office responsible for such operations is the Subdirectorate of Interpol, assisted by the Ministry of Foreign Affairs.

1.15 The CTC notes from the first report (at page 21) that general measures to combat terrorism include strengthening programmes for the protection of vulnerable persons. Please describe the legal and administrative provisions put in place to ensure the protection of such persons. Could Colombia also indicate whether, and if so how, these measures could be utilized in cooperation with, or at the request of another State.

The Ministry of the Interior and Justice is responsible for implementing Colombia's State Protection Programme, which targets the individuals referred to in article 81 of Act No. 418 of 1997, as extended by Act No. 782 of 23 December 2002 and the related regulations: Decree No. 1386 of 5 July 2002, "which sets forth protection measures for mayors, councillors and municipal representatives"; Decree No. 2742 of 25 November 2002, "which amends Decree No. 1386 of 2002 and extends the protection programme to include members of parliament"; Decision 857 of 23 July 2002, "which lays down regulations for the protection programme for mayors, councillors and municipal representatives"; Decree No. 978 of 1 June 2000, "which establishes the special comprehensive protection programme for leaders, members and survivors of the *Unión Patriótica* and the Colombian Communist Party"; and Decree No. 1592 of 18 August 2000, "which establishes the protection programme for journalists and social commentators".

Article 81 of Act No. 782 of 23 December 2003 "which extended Act No. 418 of 1997, as extended and amended by Act No. 548 of 1999, and amended a number of its provisions" reads as follows:

> *"Article 81. The National Government shall establish a protection programme for individuals whose lives, physical integrity, safety or freedom are in immediate danger for reasons relating to political or ideological violence or to the domestic armed conflict and who fall within the following categories:*
>
> – *Leaders or active members of political groups, particularly opposition groups;*
>
> – *Leaders or active members of social, civic and community associations, unions, trade unions, farmers' organizations and ethnic groups;*
>
> – *Leaders or active members of human rights organizations and members of the Misión Médica;*
>
> – *Witnesses to violations of human rights and international humanitarian law, regardless of whether or not the relevant disciplinary, legal and administrative proceedings have been initiated, in accordance with current legislation.*
>
> *Protection measures shall be based on the direct relationship between the threat and applicant's position or function within the organization. As stipulated by article 81, paragraph 1, of Act No. 418 of 1997, which establishes a number of instruments for achieving harmonious relations and the efficient administration of justice and sets forth other provisions: 'the protection programme established by the Ministry of the Interior shall produce the witness referred to in subparagraph 4 of this article when requested to do so by the judicial or disciplinary authorities or shall allow those authorities to have access to him/her, and shall take the appropriate security measures'."*

The protection measures provided for under the programme shall be temporary and shall remain in force for as long as the protected individual is subject to risk factors and threats that can be verified and that justify the measures. They shall be subject to periodic review.

The measures envisaged by the general protection programme shall be implemented first by the political authorities of the territorial entities and then by the national Government.

The measures taken shall be only those necessary for the protection of the beneficiary.

Within the framework of this legislation, the Ministry of the Interior and Justice provides comprehensive guarantees of safety for individuals or entities whose physical integrity, safety or freedom is under threat for reasons relating to the internal armed conflict afflicting Colombia.

1.16 In the context of the effective implementation of subparagraph 2 (e), the CTC would appreciate receiving information relating to the number of persons prosecuted in Colombia from 2001 through 2003 for:

– Terrorist activities;

– The financing of terrorist activities;

– Recruiting for terrorist organizations;

– Providing support to terrorists or terrorist organizations.

How many of these persons have been prosecuted for soliciting support (including recruitment) for:

– Proscribed organizations; and

– Other terrorist groups or organizations?

1.17 The CTC notes from the supplementary report (at page 22) that extradition shall not be granted:

– When the offences were committed prior to the promulgation of Legislative Act No. 01 of 1997;

– For political crimes.

In this regard, please indicate whether Colombia applies the "prosecute or extradite" (aut dedere aut judicare) principle of international law. In other words, in the event of Colombia refusing to extradite a person, based on the application of the above-mentioned provision, would Colombian judicial authorities prosecute that person for the offence or offences for which that person's extradition was originally sought?

1.18 Implementation of paragraphs 1 and 2 of the resolution requires the operation of effective customs and border controls with a view to preventing and suppressing the financing of terrorist activities. Does Colombia impose controls on the cross-border movement of cash, negotiable instruments, precious stones and metals (for example, by imposing an obligation to make a declaration or to obtain prior authorization before any such movements take place)? Please also provide information concerning any relevant monetary or financial thresholds.

Colombian customs legislation provides for controls which take account of the nature of the goods to be taken outside national territory:

Foreign currency and negotiable instruments

DIAN is responsible for controlling the entry and exit of foreign currency and negotiable instruments. Colombian nationals and foreign citizens entering the national customs territory must fill out the form entitled "Traveller's declaration: baggage and currency — entry", which warns travellers that if they are carrying more than $10,000 in cash or documents of title thereto they must declare it.

Any attempt to import cash of any denomination or origin and/or share certificates, no matter what their value, by post or via urgent shipment or freight constitutes a violation of customs legislation and will result in the seizure and confiscation of the items concerned.

Article 82 of External Decision No. 8 of 2000, amended by article 9 of External Decision No. 1 of 2003, both issued by the Board of Directors of the Bank of the Republic, governs the entry and exit of Colombian currency at borders and international airports. It provides as follows:

> *"Article 82: Entry and exit of foreign and legal Colombian currency. Individuals taking foreign or legal Colombian currency in cash or documents of title thereto worth over ten thousand United States dollars (US$ 10,000) or the equivalent in another currency into or out of the country, regardless of the means of entry or exit, must declare it to the customs authorities on the relevant form.*
>
> *Paragraph 1. This obligation shall apply to all natural and legal persons, whether public or private, including foreign exchange dealers, acting on their own behalf or on behalf of third parties. This obligation shall not apply to the Bank of the Republic, since it is the administrator of the international reserves.*
>
> *Paragraph 2. Except for transactions carried out by the Bank of the Republic, only foreign exchange dealers shall be permitted to bring into or take out of the country foreign or legal Colombian currency or documents of title thereto in order to pay for foreign exchange transactions carried out on the foreign exchange market.*
>
> *Paragraph 3. The provisions of this article shall apply without prejudice to the provisions of international treaties or conventions relating to the movement, entry or exit of foreign or legal Colombian currency in cash or documents of title thereto."*

In accordance with the foregoing, DIAN is responsible for monitoring and controlling the foreign exchange obligations in accordance with the strict guidelines established by the Bank of the Republic in its capacity as the recognized foreign exchange authority under article 372 of the Constitution.

Therefore, if the foreign exchange authority stipulates that the obligation to submit a customs declaration in respect of the entry into or exit from the country of money applies only to sums exceeding $10,000 or the equivalent in another currency, DIAN cannot impose controls on the entry or exit of smaller amounts or introduce supplementary controls in addition to those set forth in the aforementioned article 82.

In view of the above legal provisions, when foreign currency or Colombian pesos worth in excess of $10,000 or the equivalent in another currency enter or exit

the country, the customs authorities must, by means of the relevant form, be informed of the total amount of money involved.

In implementation of the provisions of the first paragraph of the aforementioned article 82, DIAN issued Decision 01483 of 3 March 2003, in which it indicated that one of the following forms must be used for declaring the entry or exit of foreign or legal Colombian currency in cash or documents of title thereto: "Traveller's declaration: baggage and currency — entry" or "Traveller's declaration: baggage and currency — exit".

That decision also provided that any person taking foreign or legal Colombian currency in cash or documents of title thereto worth in excess of $10,000 out of the country on behalf of a third party must attach to the "Traveller's declaration: baggage and currency — exit" a document indicating the name or trade name, identity, city, address and telephone number of the person requesting the transaction and the name or trade name, identity, address, telephone number, city and country of the beneficiary. That document must be signed by the person or, in the case of legal persons, the legal representative of the person requesting the transaction in question.

By means of Memorandum No. 00714 of 9 September 2003, the Customs Director set out the following requirements in respect of the foreign exchange obligations in question:

When money enters the country, the relevant declaration must be submitted to DIAN at the first point of entry into the country. When money leaves the country, the declaration must be submitted to DIAN at the point of exit.

If sums in excess of $10,000 or the equivalent in other currencies enter or leave the country and are not declared, either wholly or partly, the full amount of money or title documents will be seized with a view to initiating the relevant DIAN investigation. This procedure finds its legal basis in the powers set out in article 8, subparagraphs (f) and (g), of Decree-Law 1092 of 1996.

Each seizure shall lead to a corresponding foreign exchange investigation. The Office of the Prosecutor-General must be notified prior to or at the same time that the formal indictment is made in order to ascertain whether any criminal proceedings have been instituted against the suspect in connection with seizure of undeclared money.

The money shall be returned to the individual being investigated only if the Office of the Prosecutor-General decides not to initiate a criminal investigation into the facts relating to the non-declared money. Otherwise, the remaining money, minus the amount of the corresponding administrative penalty in accordance with the provisions of article 1, subparagraph (x), of Decree-Law 1074 of 1999, in accordance with the provisions of article 35 of Decree-Law 1092 of 1996, will be placed at the disposal of the Office of the Prosecutor-General.

Precious stones and metals

Since the import regulations do not contain specific provisions relating to precious stones and/or metals, the general standards apply, depending on the method of importation.

With regard to the export regulations, Title VII, "Export regime", Chapter I, "General Provisions", of the Customs Statute provides as follows:

According to article 228 of Decision 4240 of 2 June 2000 concerning the **export of jewellery, gold, emeralds and other precious stones**, "The export of gold, emeralds and other precious stones shall be carried out by means of the submission of a request for shipment authorization to the administrative authorities of the jurisdiction in which the goods are located, in accordance with the established procedure for definitive exportation laid out in articles 265 to 281 of Decree No. 2685 of 1999 and articles 234 to 243 of Decision 4240.

The requirement to notify the customs authorities of the entry of the goods into the main customs area shall be satisfied by the provision of the information contained in box 42, "location of goods", of the request for shipment authorization at the time of its submission.

When the goods are taken out of the country by a traveller, the export shall be processed in accordance with the procedure laid out in the first paragraph above. The individual making the declaration must submit to the Department of External Trade, or the relevant subdivision, legible photocopies of his/her passport, ticket and boarding pass in support of the request for shipment authorization.

The ticket shall be used as a waybill, and the information contained thereon shall be entered into the computer system by the competent official. Customs offices with manual systems shall enter the information in question in writing on the export declaration.

The export of these goods may also be subject to shipment by another customs authority.

The export and import regulations do not set limits or impose minimum or maximum amounts in respect of the import or export of jewellery and metals.

1.19 Subparagraph 2 (c) of the resolution requires States to deny safe haven to terrorists and their supporters. In this regard, could Colombia please provide the CTC with an outline of the legislative provisions regarding the granting of citizenship or other civic rights? Can a foreigner, who is granted citizenship, change his name? What precautions are taken to establish the true identity of a person before new identity papers are issued to that person?

In this regard, the Constitution provides as follows:

"Title III
Inhabitants and territory

Chapter I
Nationality

Article 96

Colombian nationality is acquired as follows:

By birth:

In order to be considered a native-born Colombian, a person must fulfil one of two conditions: one parent must be a native-born Colombian or a Colombian national or, if both parents are foreign nationals, one parent must have been resident in Colombia when the child in question was born;

Any child of a Colombian mother or father who was born abroad and subsequently became resident in Colombian territory or registered with one of the Republic's consular offices.

By naturalization:

Foreign nationals may apply for and obtain a naturalization card in accordance with the law; the latter stipulates under what circumstances Colombian nationality acquired by naturalization can be lost;

Nationals by birth of Latin American and Caribbean States who are resident in Colombia may, with Government authorization and in accordance with the law and the principle of reciprocity, request to be registered as Colombian citizens with their local municipal authorities, and

Members of indigenous communities sharing border zones with Colombia, in implementation of the principle of reciprocity in accordance with public treaties. No Colombian by birth may be deprived of his/her nationality.

No Colombian shall forfeit his/her nationality because he/she acquires another nationality. Persons who are Colombian by naturalization shall not be required to surrender their nationality of origin or naturalization.

Anyone who has surrendered his/her Colombian nationality may get it back by legal means."

Chapter II
Citizenship

Article 98. Citizenship is in effect lost when nationality has been renounced and its exercise can be suspended on the basis of a judicial decision in cases that are provided for by law.

Those persons who have had the exercise of their citizenship suspended may apply for its reinstatement.

Unless otherwise provided by law, citizenship shall be exercised as from the age of 18.

Article 99. The exercise of citizenship is a prior and indispensable condition for exercising the right to vote, running for and holding any public office that carries with it authority or jurisdiction.

As stated in the Constitution, a distinction is made between those who are native-born Colombians and those who have acquired Colombian nationality (having fulfilled the requirements established by Law No. 43 of 1993, Decree No. 1869 of 1994 and Decree No. 2150 of 1995).

- Once a foreigner has acquired Colombian nationality he/she may change his/her name; this falls within the province of the National Registry of Civil Status, the relevant provision being article 94 of Decree No. 1260 of 1970 (concerning the statute of the civil status register).

Article 94, as amended by article 6 of Decree No. 999 of 1988, provides that:

"A registered person may arrange, one time only, to have the register amended by means of a public deed, in order to substitute, rectify, correct or add to his/her name with a view to establishing his/her personal identity.

A married woman may, by means of a public deed, add or remove her husband's surname, which is preceded by the preposition '*de*', if she has adopted it or if this has been established by law.

The instrument referred to in this article must be entered in the relevant civil register, for which a new page will be used. The original page and the replacement page will have notes that cross-reference one another."

1.20 Effective implementation of subparagraphs 2 (c) and (g) of the resolution requires the enforcement of effective customs, immigration and border controls so as to prevent the movement of terrorists and the establishment of safe havens.

In this regard:

- **Would Colombia please outline how it implements the common standards set by the World Customs Organization (http://www.wcoomd.org) in relation to electronic reporting and the promotion of supply chain security?**
- **Is the supervision of people and cargo in Colombia undertaken by separate agencies (immigration and customs) or is it undertaken by the same body? If there is more than one agency involved, do these agencies share information and do they coordinate their activities?**
- **Please outline the legal and administrative procedures developed by Colombia in order to protect: its port facilities and ships; persons working in those port facilities and ships; cargo; cargo transport units; offshore installations; as well as ships' stores from the risk of terrorist attacks. Do the competent Colombian authorities have procedures in place periodically to review and update transport security plans?**

1.21 In the context of the implementation of subparagraph 2 (k) and (j) of the resolution, has Colombia implemented the standards and recommendations of the International Civil Aviation Organization (annex 17)? Could Colombia inform the CTC when the ICAO safety audit of Colombia's international airports has been completed?

The activity undertaken by ICAO after the terrorist attacks of 11 September 2001 involves the revision and strengthening of preventative ground security measures for civil aviation, established in annex 17 of the Convention on International Civil Aviation (Law No. 12 of 1947), with particular regard to the following:

- Cooperation between States for exchanging information regarding threats;
- Increasing controls in relation to hand luggage after the passenger has checked in;
- Quality controls for security procedures;
- Licensing of staff working in airport security;

- Applying international civil aviation security measures to airports and national flights;
- Securing aircraft cockpits;
- Administering responses to acts of illicit interference.

Colombia has pioneered the adoption in Latin America of a National Airport Security Programme for civil aviation at public airports (resolution 4026 of 5 July 1995). The purpose of that programme is "*to protect national and international airline operations and to provide the necessary safeguards to combat acts of illicit interference by means of regulations, methods and procedures aimed at protecting passengers, crew, ground staff, the general public, customers, aircraft, airports and airport installations*".

These strategies focus on developing standards (local security plans for each airport and for each airline operator), human resources (hiring of private security companies and agreements with the National Police), infrastructure (adoption of policies for the construction of perimeter barriers, airport and aeronautical infrastructures) and technology (inclusion of systems to check users' identification for entering restricted areas in airports).

These measures should be implemented in 2004, though the majority of them came into force in July 2003, with the exception of the measure relating to the inspection of all luggage in the hold, which will come into force from 2006, as observed in annex 17.

In spite of this last clarification, Colombian Civil Aeronautics has been developing airport security with a futuristic vision by designing and implementing preventative procedures that would apply to all airports, not just those that serve international civil flights but also to those that serve national flights.

1.22 Effective implementation of subparagraph 2 (a) of the resolution requires each Member State, inter alia, to have in place appropriate mechanisms to deny access to weapons to terrorists. With regard to this requirement of the resolution, as well as to the provisions of the Convention on the Marking of Plastic Explosives for the Purpose of Detection and the International Convention for the Suppression of Terrorist Bombings please provide the CTC with information relevant to the following questions:

(a) Legislation, regulations, and administrative procedures

– **What national measures exist to prevent the manufacture, stockpiling, transfer and possession of unmarked or inadequately marked:**

- **Small and light weapons;**
- **Other firearms, their parts and components and ammunition;**
- **Plastic explosives;**
- **Other explosives and their precursors.**

(b) **Export control**

- **Please describe the system of export and import licensing or authorization, as well as measures on international transit, used by Colombia for the transfer of:**
  - **Small and light weapons;**
  - **Other firearms, their parts and components and ammunition;**
  - **Plastic explosives;**
  - **Other explosives and their precursors.**
- **Please specify what export control procedures and other existing mechanisms are in place for the purpose of exchanging information on the sources, rosutes and methods used by traders in firearms.**
- **Do Colombian procedures allow for the lodging and registering or checking of the Goods declaration and supporting documents relating to firearms prior to the import, export or transit of these goods? Does Colombia encourage importers, exporters or third parties to provide information to Customs prior to their shipment? Please also outline any appropriate mechanism to verify the authenticity of licensing or authorizing documents for the import, export or transit of firearms.**
- **Has the Colombian Customs Service implemented intelligence-based risk management of borders to identify high-risk goods? Please outline what data and considerations are used by the Customs Administrations to identify high-risk consignments prior to shipment.**

(c) **Brokering**

- **What national legislation or administrative procedures exist to regulate the activities of those who engage in firearms brokering within national jurisdiction and control? Please outline the relevant procedures with regard to registration of brokers and the licensing or authorization of brokering transaction.**
- **Do Colombian laws require the disclosure of names and the locations of brokers involved in firearm related transaction, on the import and export licenses, or authorizing and accompanying documents?**
- **Do existing legal provisions provide for the sharing of relevant information with foreign counterparts to enable cooperation in preventing illegal shipments of firearms, their parts and components and ammunition, as well as explosives and their precursors?**

(d) **Stockpile management and security**

- **Please outline the legal provisions and administrative procedures in Colombia that provide for the security of firearms, their parts and components, ammunition and explosives and their precursors at the time of their manufacture, import, export and transit through Colombian territory.**

– **What national standards and procedures exist for the management and security of firearms and explosives stocks held by the Government of Colombia (in particular, held by armed forces, police, etc.) and other authorized bodies?**

– **Has Colombia implemented, using risk assessment principles, any special security measures on the import, export and transit of firearms, such as conducting security checks on the temporary storage, warehousing and means of transport of firearms? Are persons involved in these operations required to undergo security vetting? If yes, please give details.**

(e) Law enforcement/illegal trafficking

– **What special measures are used by Colombia to prevent and suppress illegal trafficking in firearms, ammunition, and explosives that may be utilized by terrorists?**

As regards the import and export of weapons, ammunition and explosives, the following regulations apply:

Article 223 of the Constitution stipulates: *"Only the Government is entitled to import or manufacture arms, war ammunition and explosives"*.

Decree No. 2535 of 17 December 1993 sets forth regulations governing weapons, ammunition and explosives and article 51, paragraph 3, stipulates: "The Government may exercise control over the elements required for industrial use that while harmless on their own, when combined constitute explosive substances and over elements that can be processed and transformed into explosives".

Article 57 concerning the import and export of weapons, ammunition and explosives states that:

> *"Only the Government may import and export weapons, ammunition and explosives and accessories, in accordance with the regulations issued by the Government through the Ministry of Defence.*
>
> *As provided for by article 51, paragraph 3, of this decree, the import of explosives and raw materials may be carried out by at the request of individuals for commercial reasons, except in circumstances of national defence or security. The government body responsible for these transactions may not derive any profits from them and will only charge administrative and handling costs."*

Article 19 of Decree No. 1809 of 1994, which regulates Decree No. 2535 of 1993, states that, for the purposes of article 57 of Decree No. 2535 of 1993, the Government can, through the Military Industry Board (INDUMIL), import and export weapons, ammunition and explosives for juridical and natural persons who so require and who have fulfilled the established requirements.

The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction was approved by means of Act No. 525 of 12 August 1999, which was ratified on 5 May 2003. INDUMIL was designated the body that should act as technical secretariat in Colombia for controlling imports of substances listed in schedules 1, 2 and 3 of the Convention.

As a State-owned industrial and commercial company, INDUMIL develops the Government's policy in relation to weapons, ammunition and explosives. The Ministry of Defence issued Decree No. 334 of 28 February 2002, establishing regulations for the explosives and the raw materials covered by article 51, paragraph 3, of Decree No. 2535 of 1993.

Article 2 of Decree No. 334 of 2003 on imports establishes as follows: "*Only the Government, through Military Industry Board as the body linked to the Ministry of Defence, may import or authorize the import of the products, supplies or raw materials referred to in article 1 above, having gained the prior approval of the General Command of Military Forces.*"

In conjunction with INDUMIL and the Directorate of National Taxes and Customs (DIAN), the Ministry of Foreign Trade issued External Circular No. 068 of 2002, updating the list of controlled products and of those that should be imported through INDUMIL.

As regards DIAN's functions it gets the information from import declarations, the Single Export Document (DEX) and the supporting documents that are legally required for any foreign trade transaction.

DIAN has a Regional Intelligence Liaison Office (RILO), which is backed by the World Customs Organization and which is responsible for exchanging information in relation to narcotics, hazardous substances, weapons, explosives, radioactive material, the protection of endangered species, trademark counterfeiting and intellectual property as part of an intelligence mechanism to locate routes, methods and sources of financing used by traffickers of the above-mentioned merchandise.

Regarding the second concern, and based on the reply to the previous question, in Colombia the Government, through INDUMIL, can import and export weapons, ammunition and explosives for juridical and natural persons who so require and who have fulfilled the established requirements. It is therefore this body that is responsible for the lodging and registering or checking of goods declarations and supporting documents relating to firearms, prior to the import, export or transit of these goods. DIAN only carries out the operational procedures once they have been authorized by the competent body.

Regarding the third concern, a physical inspection is carried out for both imports and exports with this type of merchandise; this involves the agent concerned directly verifying supporting documents and the merchandise, with a view to ensuring compliance with customs requirements.

As indicated earlier, through the Regional Intelligence Liaison Office (RILO) it would be possible to find out about high-risk articles that are intended to be brought into national customs territory, prior to their import, and to alert Customs.

With regard to the supply of weapons to terrorists, the Inter-Agency Group for Analysis of Terrorist Activities (GIAT) has existed since 1993. The Group is composed of officials of the Administrative Department of Security (DAS), the National Police and the Army; its principal task is to gather information at the national level regarding seizure of weapons, establish their origin and the route by which they entered the illegal market, as well as terrorist incidents that occur at the national level. Weapons manufactured in or imported from the United States of

America are tracked by the Directorate of Alcohol, Tobacco and Firearms (ATF), which has its headquarters in Bogotá. During the second week of June 2003, training on this topic was carried out in conjunction with the Directorate and was aimed at 70 investigators of the Directorate of the Judicial Police and 36 sectional directorates throughout the country. The training was attended by officials from DAS and the Technical Investigations Unit (CTI).

Weapons manufactured in other countries are tracked by Interpol. Tracking involves not only the person who sold the weapons and the route that such weapons followed, but also the verification of the businesses and persons that facilitated such traffic. Many of the weapons that have recently been seized were legally purchased but were diverted for illicit purposes in exchange for money or drugs. There is also coordination with the Illegally Armed Persons Group of the Directorate of the Judicial Police, the Directorate of Naval Intelligence, the Directorate of Air Force Intelligence.

With regard to firearms controls, the National Police has a policy of restricting the carrying of weapons in the territories of 60 municipalities with high crime rates. In addition, in order to reduce the impunity of this type of offence and suppress illicit weapons, the National System of Criminal Ballistics Registry has been established; the System is composed of judicial police institutions engaged in the investigation of weapons, bullets and cartridges.

1.23 In relation to its legal system on firearms referred to in the supplementary report (pages 15 and 16), can Colombia outline the conditions an individual (Colombian national or legal alien) has to meet under Colombian law to be entitled to receive a licence to purchase firearms? How many firearms of a particular type may an individual possess? Are there any exceptions in that regard?

The reply to this question is provided for by Decree No. 2535 of 1993, "which regulates arms, munitions and explosives", specifically in sections 3 and 4. The relevant sections of said decree are as follows:

Article 2. **Exclusive rights**. Only the Government can import, export, manufacture or market weapons, munitions, explosives and raw materials, machinery and devices used to manufacture them, and it exercises control over such activities.

Article 3. **State permit**. Exceptionally, individuals may possess or bear weapons, their parts, components, ammunition, explosives and accessories provided they have a permit issued by means of the discretionary power of the competent authority.

Article 7. **Classification**. For the purposes of this decree, firearms are classified as follows:

(a) Weapons of war or for the exclusive use of the State security bodies;

(b) Weapons of restricted use;

(c) Weapons for civilian use.

Article 8. **Weapons of war or for the exclusive use of the State security bodies**. Weapons of war and therefore for the exclusive use of the State security bodies are weapons used for the purpose of defending independence and national sovereignty, maintaining territorial integrity, ensuring peaceful coexistence, the exercise of

public rights and freedoms, constitutional order and maintaining and restoring public order. They include:

(a) Pistols and revolvers with a calibre of 9.652 mm (0.38 inch) that do not meet the characteristics established in article 11 of this decree;

(b) Pistols and revolvers whose calibre exceeds 9.652 mm (0.38 inches);

(c) Rifles and semi-automatic carbines whose calibre exceeds 22L.R.;

(d) Automatic weapons, irrespective of calibre;

(e) Anti-tank weapons, cannons, mortars, mortar bombs, ground, sea and air missiles of all calibres;

(f) Rocket launchers, bazookas, grenade launchers of any calibre;

(g) Explosive charges, such as hand grenades, aerial bombs, fragmentation shells, petards, missiles and mines;

(h) Flare grenades, smoke grenades, armour-piercing grenades or training grenades of the State security bodies;

(i) Weapons that have military mechanisms, such as infrared or laser sights, or accessories such as grenade launchers and silencers;

(j) Ammunition for the above-mentioned types of weapons.

Paragraph 1. Exceptionally, the material set out in paragraph (g) may be authorized, if prior approval has been granted by the Arms Committee referred to in article 31 of this decree.

Paragraph 2. Through the Ministry of Defence, the Government shall establish weapons for exclusive use that can be borne by members of national security bodies and other permanent and official armed bodies created or authorized under the law.

Article 9. **Weapons of restricted use**. Weapons of restricted use are weapons of war or weapons for the exclusive use of the State security bodies. Exceptionally, they may be authorized for special self-defence by means of the discretionary power of the competent authority; they include the following:

(a) Pistols and pistols with a calibre of 9.652 (0.38 inch) that do not meet the characteristics established in article 11 of this decree;

(b) Automatic pistols or sub-machine guns.

Paragraph 1. Those persons, who on the date that this decree is issued, possess weapons of this type with a corresponding permit or valid licence must obtain a new permit to possess or bear weapons, in accordance with the terms specified in articles 22 and 23 of this decree.

Paragraph 2. The Arms Committee of the Ministry of Defence may authorize the possession or bearing of weapons of restricted use for companies transporting securities, company security departments and special security services, if prior approval has been granted by the Superintendence of Surveillance and Private Security.

Paragraph 3. The Government shall regulate the maximum number of weapons of this type that individuals in each instance may carry.

Article 10. **Weapons for civilian use**. These are weapons that can be owned or carried by individuals with a permit from the competent authority. They are classified as follows:

(a) Weapons for self-defence;

(b) Sporting weapons;

(c) Collector's weapons;

Article 11. **Weapons for self-defence**. These weapons are designed for personal defence and short-range use. They are classified as follows:

(a) Revolvers and pistols that have all of the following characteristics:

- Maximum calibre: 9.652 mm (0.38 inches).
- Maximum length of barrel: 15.24 cm (6 inches).
- For pistols: repeat- or semi-automatic action.
- Maximum magazine capacity of nine cartridges for pistols, with the exception of those that are 22 calibre, in which case the maximum is 10 cartridges.

(b) Non-automatic carbines of 22S, 22L and 22L.R. calibres.

(c) Rifles whose barrel length does not exceed 22 inches.

Article 12. **Sporting weapons**. These are firearms that comply with the necessary specifications to practise shooting, as accepted by the International Shooting Sport Federation, and the normal ones to practise hunting, in accordance with the following classification:

(a) Pistols and revolvers for free fire, rapid fire and centre fire events;

(b) Non-automatic side arms for practise fire;

(c) Revolvers or pistols of 0.38 inch calibre or less and with a barrel that exceeds 15.24 cm (6 inches);

(d) Rifles whose barrel length exceeds 22 inches;

(e) Revolvers and pistols using black powder;

(f) Non-automatic carbines of 22S, 22L and 22L.R. calibres;

(g) Hunting rifles of any calibre that are not semi-automatic;

(h) Sporting rifles that are not semi-automatic.

Article 13. **Collector's weapons**. These are weapons that due to their historical, technological or scientific characteristics are allocated to private or public collections.

Chapter II
Prohibited weapons and accessories

Article 14. **Prohibited weapons**. In addition to the provisions of article 81 of the Constitution, the possession and carrying of the following weapons, their parts and components are prohibited throughout national territory:

(a) Weapons for exclusive use or weapons of war, except for properly authorized collector's weapons or those provided for by article 9 of this decree;

(b) Firearms of any calibre whose factory or original characteristics have been significantly modified, increasing the lethality of the weapon;

(c) Home-made weapons, except for front-loading shotguns;

(d) Weapons that do not have the required permit issued by the competent authority;

(e) Those that the Government, taking into account technological advances, classifies as prohibited.

Also prohibited are the possession or bearing of devices manufactured using poisonous gases, corrosive substances or metals that, with the expansion of the gases, produce shrapnel, and the implements intended for launching or activating such weapons.

Article 15. **Prohibited accessories**. Infrared, laser, and night-vision sights, silencers and sound-altering devices shall be for the exclusive use of the police.

The Arms Committee of the Ministry of Defence, referred to in article 31 of this Decree, may authorize individuals to use any of these devices for sporting competitions.

Chapter III
Possession, bearing, transport, loss or destruction of firearms and ammunition

Article 16. **Possession of firearms and ammunition**. The possession of firearms shall be defined as the possession of a firearm and its ammunition, for the purposes of self-defence, at the location indicated on the licence. Possession authorizes the use of the firearm at the said location only, by the holder of a valid licence or by permanent or temporary inhabitants responsible for such defence.

Sporting firearms may be used for target-shooting and hunting, within the limitations established by the laws and regulations, in particular the rules for the protection and conservation of natural resources.

Article 17. **Bearing of firearms and ammunition**. The bearing of firearms and ammunition shall be defined as the action of carrying firearms on one's person, or within reach, for the purposes of self-defence, under the licence issued by the competent authority.

Title III
Licences

Chapter I
Definition, classification, exceptions and Arms Committee

Article 20. **Licences**. A licence shall be defined as the authorization granted by the State to individuals or entities to possess or bear firearms, subject to the discretionary power of the competent military authority.

Every firearm in the national territory in the possession of individuals must be covered by one licence to possess or bear firearms, for the authorized purpose.

However, two licences may be issued for one firearm, if the firearm will be used by relatives up to the second degree of consanguinity or by spouses or common-law spouses.

Article 21. **Classification of licences**. Licences shall be valid throughout the national territory. There are three types of licence: the licence to possess firearms, the licence to bear firearms and the special licence.

Article 22. **Licence to possess firearms**. This licence authorizes the bearer to keep the firearm at the stated location, whether it be his/her residence, place of work or a facility he/she wishes to protect.

A maximum of two licences to possess firearms may be issued per person.

The licence to possess firearms shall be valid for a maximum of 10 years.

In order to obtain a licence to possess firearms, collectors must submit evidence showing that they are collectors, in accordance with the provisions of this Decree; sportsmen must submit evidence showing that they are members of a shooting and hunting club affiliated to the Colombian Shooting and Hunting Federation.

Article 23. **Licence to bear firearms**. This licence authorizes the holder to bear one firearm.

A maximum of two licences to bear firearms may be issued per person. Authorization for the second firearm shall be evaluated in light of the applicant's specific security situation. Anyone who can demonstrate that they are in the situation described in article 34, paragraph (c), of this Decree may be authorized to bear a higher number of firearms, subject to authorization by the Arms Committee of the Ministry of Defence.

The licence to bear self-defence firearms shall be valid for a period of three years, and the licence to bear self-defence firearms for restricted use shall be valid for one year.

Article 24. **Special licence**. This licence is issued for the possession or bearing of firearms intended for the protection of diplomatic missions or duly accredited foreign officials.

Any licences granted to a diplomatic mission shall be valid for four years. Licences issued to a specific official shall be valid for the duration of the official's mission.

Article 25. **Exceptions**. A licence to possess or bear firearms shall not be required for air guns, gas guns and black powder firearms, including shotguns.

Notwithstanding the above, firearms not requiring a licence shall be subject to the provisions of articles 84-94 of this Decree, insofar as they are applicable.

Article 26. **Authorization of individuals**. Without prejudice to the provisions of articles 23 and 34 (c), of this Decree, individuals may be issued with a maximum of two licences to possess and two licences to bear the firearms provided for in articles 10 and 12 of this Decree and, in exceptional cases, for those provided for in article 9 of this Decree.

Article 27. **Authorization of entities**. From the entry into force of this Decree, entities may be granted a licence to possess up to five firearms, of any of the following types: pistol, revolver, carbine or shotgun, having the characteristics set forth in article 11 of the present Decree, except in the case of surveillance and private security services, which shall be governed by the specific rules provided for in this Decree and the provisions regulating this activity.

Article 28. **Authorization for rural premises**. From the entry into force of the present Decree, the military authority concerned may, in the case of rural premises, issue a licence to possess up to five self-defence firearms.

Should a higher number of licences be required, due to special circumstances, the owner of the premises shall set up a security department, under the terms established in the law.

Article 29. **Diplomatic missions**. The General Command of Military Forces may authorize the issuing of licences to possess or bear firearms and ammunition for the protection of diplomatic headquarters and their staff duly accredited with the Colombian Government, taking into account the practical circumstances of each mission or staff member.

Article 30. **Authorization to install rifle ranges**. The installation of rifle ranges shall require the authorization of the General Command of Military Forces, subject to fulfilment of government requirements.

Article 31. **Arms Committee of the Ministry of Defence**. The Committee shall be composed of:

(a) Two members from the Ministry of Defence;

(b) The Ombudsman or his Deputy;

(c) The Superintendent for Surveillance and Private Security or his Deputy;

(d) The Head of Department D-2 EMC of the General Command of Military Forces;

(e) The Deputy Director of the Judicial and Investigative Police;

(f) The Chief of the Department for the Control of Trade in Firearms, Ammunition and Explosives.

The Arms Committee shall consider and rule on petitions submitted by individuals regarding firearms, ammunition, explosives and their accessories in the cases established in the present Decree.

The Committee shall be chaired by one of the two Ministry of Defence delegates, at the Ministry's discretion.

Chapter II
Competence, requirements, expiry and suspension of licence

Article 32. **Competence**. The following military authorities are competent to issue and renew licences to possess and bear firearms and to sell ammunition and explosives at locations determined by the Ministry of Defence: The Chief of the Department for the Control of Trade in Firearms, Ammunition and Explosives, the Chief of Staff of Small Operative Units or their equivalents in the navy or air force,

and the Commanders and Deputy Commanders of Army Tactical Units, or their equivalents in the Navy and Air Force.

Article 33. **Requirements regarding applications for licence to possess firearms**. In order for a request for a licence to possess firearms to be considered the following documents must be submitted:

1. Individuals:

(a) Form issued by the competent authority, duly completed;

(b) Reservist or temporary military card;

(c) Photocopies of duly authenticated identity card and judicial certificate;

(d) Medical certificate attesting to applicant's psychological and physical fitness to use firearms.

2. Entities:

(a) Form issued by the competent authority, duly completed;

(b) Articles of incorporation and legal representative;

(c) Photocopies of legal representative's duly authenticated identity card and judicial certificate;

(d) Favourable opinion of the Superintendence of Surveillance and Private Security concerning the services it monitors.

In addition to the aforementioned, the applicant must explain why he needs firearms for his security and protection; that statement shall be evaluated by the competent authority.

Article 34. **Requirements regarding applications for licence to bear firearms**. In order for a request for a licence to bear firearms to be considered the following documents must be submitted:

1. Individuals:

(a) The documents set out in the previous article, where applicable;

(b) If the request concerns a self-defence firearm, the applicant must explain why he needs to bear a firearm to defend himself and ensure his personal safety, in accordance with the provisions of article 23 of this Decree, and provide evidence thereof;

(c) If the request concerns a licence to bear a firearm for restricted use, the applicant must explain the special circumstances of his profession, trade, position or economic activity that put him at risk of death or serious injury and why issuance of the licence is justified, and provide evidence thereof and of the authorization of the Arms Committee.

2. Surveillance and private security services:

(a) Requirements as set forth in the previous article for entities.

Article 35. **Information for the authorities**. The information to be submitted to the authorities in order to obtain firearms, ammunition and explosives shall be

considered as having been provided under oath, and the individual shall be so informed when asked to provide such information.

It is the responsibility of the competent official to investigate all circumstances and facts submitted with the request, by consulting the files of the National Police, the Department for the Control of Trade in Firearms, Ammunition and Explosives of the General Command of Military Forces and other State security agencies.

Article 36. **Change of domicile**. Holders of a licence to possess or bear firearms shall inform the competent military authority of any change of domicile or of the place the firearm is held within 45 days after such change is made, and arrange for the necessary changes to be made on the licence to possess firearms, as appropriate.

Article 38. **Renewal**. Holders of a licence to possess or bear firearms who wish to renew their licence must comply with the provisions of this Decree. However, the General Command of Military Forces shall, before the licence expires, send a written notice to the address provided by the holder to the competent military authority.

Article 39. **Requirements for renewal**. In order to renew a licence, the applicant must demonstrate that the circumstances under which the licence was originally issued still apply, and also must provide the following documents:

(a) Form issued by the competent military authority, duly completed;

(b) Valid licence;

(c) Photocopy of identity card and judicial certificate;

(d) Fee.

The competent authority may, if it wishes, order that the firearm be presented.

Article 40. **Expiry of licence**. Licences shall cease to be valid in any of the following circumstances:

(a) Death of licence holder;

(b) Transfer of right to use firearm without proper authorization;

(c) Surrender of firearm to the State;

(d) Destruction of, or clear damage to licence;

(e) Confiscation of firearm;

(f) Imposition of prison sentence on licence holder;

(g) Expiry of licence.

Paragraph 1. In the case provided for in (a) above, beneficiaries or interested persons shall inform the competent military authority within 90 days of the death, and may obtain a licence to possess the deceased's firearms, subject to fulfilment of the requirements provided for in this Decree, without prejudice to prevailing inheritance laws.

Paragraph 2. In the case provided for in (f) above, the firearms must be surrendered to the military authority by whomsoever the licence holder instructs to do so within 90 days of his imprisonment. After this period, the firearm shall be confiscated.

Article 41. **Suspension**. The authorities mentioned in article 32 of the present Decree may suspend the validity of all licences to possess or bear firearms issued to individuals, entities or rural premises. If the Arms Committee of the Ministry of Defence agrees, they may also order the suspension of licences issued, to certain individuals, entities or rural premises if they deem that the circumstances under which the licence was originally issued no longer apply.

If the licence holder affected by the individual suspension order fails to return the firearm to the competent military authority within five days of the order, the firearm shall be confiscated, without prejudice to the relevant legislation in force.

If the suspension is general in nature, the holders may not bear the firearms.

Paragraph 1. Governors and mayors may request the competent military authority, either directly or through the Ministry of Defence, to order a general suspension.

Paragraph 2. The military authority ordering the suspension of all licences may authorize the bearing of firearms on a special and individual basis at the request of the holder or of the respective governor or mayor.

Article 42. **Voluntary suspension**. The holder of a licence may request that his/her licence be suspended if he/she does not wish to use the firearm, in which case the firearms shall be temporarily stored with the closest military unit. During the suspension period, the term of validity of the licence shall temporarily cease to run.

Article 43. **Loss of licence**. If the licence is lost for any reason, the owner of the firearm shall:

1. Report the loss;

2. Inform the military authority closest to his place of residence within 30 days of the loss, under penalty of the sanctions provided for in this Decree.

When the aforementioned requirements have been satisfied, the competent military authority may issue a new licence.

Chapter III
Transfer of right to use firearm

Article 44. **Application for transfer of right to use firearm**. When the holder of a licence to possess or bear firearms wishes to transfer that right, he shall make the appropriate application to the competent military authority; the letter may authorize the transfer, provided that the person to whom the right is to be transferred fulfils the conditions set forth in this Decree.

Article 45. **Procedure for transfer of rights**. The transfer of the right to use self-defence firearms may be authorized in the following cases:

(a) Between individuals or entities, subject to authorization from the competent military authority;

(b) Between collectors, in the case of firearms collections, and between members of clubs belonging to the Colombian Shooting and Hunting Federation — between the clubs themselves — in the case of sporting firearms;

(c) From an individual to an entity of which the individual is a member or shareholder.

Special clause. Licences to possess firearms for restricted use may be transferred among relatives only up to the fourth degree of consanguinity, the second degree of affinity or the first civil degree, between spouses or common-law spouses.

Title IV
Ammunition, explosives and their accessories

Chapter I
Ammunition

Article 46. **Definition**. The term "ammunition" shall be understood as the charge required for firearms to function, and generally comprises cartridge, detonator cap, gunpowder and projectile.

Article 47. **Classification**. Firearms shall be classified:

1. By calibre; or

2. By nature of use: military, exclusive use, self-defence, sporting or hunting.

Article 48. **Sale of ammunition**. The military authorities described in the present Decree may sell ammunition to holders of the corresponding licences.

At the discretion of the competent authority, the holder may be required to present the firearm, in addition to the licence.

Special clause. The General Command of Military Forces shall determine the quantities and type of ammunition, class and frequency of sale, for each firearm type and each licence class.

Article 49. **Prohibition**. The sale and use by individuals of explosive, toxic, expansive and fragmentation ammunition is prohibited.

Chapter II
Explosives

Article 50. **Definition**. The term "explosives" shall be understood as any substance or compound that may, under certain conditions, rapidly produce a large quantity of gases with violent mechanical or thermic results.

Article 51. **Sale**. The sale of explosives or their accessories shall be subject to presentation of the following:

(a) Submission of an application for sale;

(b) Proof of activity for which the explosive is required;

(c) Explanation of the quantity of explosives and accessories requested;

(d) Judicial certificate of applicant;

(e) Statement of the means whereby the individual or entity acquiring the explosives will control them, as required by the competent military authorities.

Paragraph 1. The sale of explosives shall be at the sole discretion of the competent military authority, in light of the security situation prevailing in the area where the material is to be used, and with reference to the interest and security of the State.

The sale may be ongoing when it is determined that the explosives are to be used for industrial purposes.

Paragraph 2. Subject to coordination, it may be possible to authorize the manufacture and sale of explosives at the workplace.

Paragraph 3. The Government may exercise control over industrial elements that are not in themselves explosive but which may form explosive substances when joined in a compound, and over elements that are not explosive in their original state but may be transformed into explosives through a chemical process.

Article 52. **Liability**. Any individual or entity acquiring explosives shall ensure that they are used correctly and exclusively for the purposes set forth in the purchase request. The purchaser shall agree to be liable for any legal sanctions that may be imposed for the unlawful use or diversion of such elements, whether through deceit, negligence or failure to observe the control mechanisms established.

Article 53. **Shipment by air**. The shipment by air of firearms, ammunition, explosives and their accessories shall be carried out pursuant to the regulations of the Civil Aeronautics Administrative Department, or the entity acting on its behalf, in accordance with the Manual of Aeronautic Regulations and other relevant provisions.

Article 54. **Shipment of explosives**. The shipment of explosives and their accessories within the national territory shall be carried out in accordance with the requirements of the General Command of Military Forces.

Article 55. **Supply and registration of explosives**. For the supply of explosives, individuals or entities legally authorized to use explosives for industrial purposes shall design special marks, numbers or distinguishing devices with a view to controlling the quantities required for their use.

Such persons shall keep records indicating the quality, characteristics and rate of use of such materials.

Article 56. **Transfer of explosives**. Explosives may be transferred only with the prior authorization of the competent military authority.

Title V
Import and export of firearms, ammunition and explosives

Article 57. **Import and export of firearms, ammunition and explosives**. Only the Government may import and export firearms, ammunition, explosives and their accessories, in accordance with the regulations issued by the Government through the Ministry of Defence.

The import of explosives and the raw materials referred to in article 51, paragraph 3, of this Decree may be carried out at the request of individuals for reasons of commercial advantage, barring circumstances of defence and national security. The Government entity responsible for such operations shall derive no form of profit from such import operations and shall recoup only the administrative and management costs.

Article 58. **Temporary import and export**. The Government, through the Ministry of Defence, may issue import licences for firearms, ammunition and their

accessories to foreign firms or their representatives in Colombia, for the purpose of authorized tests and demonstrations. It may also issue a temporary export licence for repairs and competition.

When the import licence expires, such elements shall be re-exported. The holder of the licence shall provide the General Command of Military Forces with written proof that this has been done.

When the Government authorizes the import of firearms by foreign nationals, the Customs Office shall indicate in the passport of those concerned that the firearms must accompany their owner upon his departure from the country. The immigration service shall check to make sure that this is done.

Title VI
Weapons facilities, pyrotechnic articles factories, import and acquisition of raw materials

Article 59. **Operation**. Factories for the manufacture of pyrotechnic articles, gunpowder, gunshot and detonator caps and firearms-repair facilities may operate in the country provided they have a permit issued by the General Command of Military Forces and provided they fulfil the latter's requirements.

Article 60. **Repair of firearms**. Any individual or entity holding a licence who needs to have a firearm repaired must take it to one of the firearms-repair facilities authorized by the General Command of Military Forces and must leave the relevant licence, or an authenticated photocopy of same, with the firearm in order for the latter to be repaired.

Any facility that repairs a firearm without [having in its possession] the requisite licence shall see its operating permit cancelled and the firearm confiscated, without prejudice to the applicable criminal penalty.

Article 61. **Security measures.** Security measures for weapons manufacturing and repair facilities shall be included in the security manuals issued by the General Command of Military Forces.

Paragraph 1. The National Police shall periodically inspect weapons manufacturing and repair facilities.

If necessary, the General Command of Military Forces shall order inspections to be conducted.

Paragraph 2. The municipal authorities and authorities of the Capital District shall designate authorized locations for plants that manufacture and stores that sell pyrotechnic articles.

Article 62. **Import of raw materials.** Raw materials or machinery or devices which may be necessary for operations in the manufacturing and repair facilities referred to in article 59 of this Decree cannot be imported without the prior authorization of the General Command of Military Forces.

Title VII
Shooting and hunting clubs

Article 63. **Membership.** The Colombian Shooting and Hunting Federation may grant membership to clubs engaging in these activities provided that they fulfil the procedures established by the General Command of Military Forces and obtain the corresponding hunting license from the natural resources administrative authority and a favourable recommendation from the Commander of the Army Operational Unit, or the equivalent thereof in the Colombian Navy or Air Force, in whose jurisdiction the applicant club has its headquarters.

Article 64. **Oversight of clubs.** Once they are members of the Colombian Shooting and Hunting Federation referred to in this Chapter, shooting and hunting clubs shall be under the supervision of the Tactical or Operational Command Units — or their equivalents in the Navy and Air Force — within whose jurisdiction the club is located, without prejudice to such oversight as may be exercised by the authorities responsible for protecting natural resources, where necessary.

Article 65. **Liability.** All shooting and hunting clubs shall be accountable to the military authorities referred to in the preceding article for the safety and proper use of weapons and ammunition owned by their members, without prejudice to the liability that must be assumed by each member.

Article 66. **Sale to members.** Ammunition may be sold to club members solely for sports weapons covered by their permits. Hunters may be sold adequate ammunition to hunt forest animal species which they are authorized to hunt by the natural resources administrative authority.

Article 67. **Oversight of members.** Oversight of weapons and ammunition belonging to members of shooting and hunting clubs shall be exercised by the military authorities referred to in article 64 of this Decree.

Article 68. **Dismissal of members.** By decision of the General Command of Military Forces, the Colombian Shooting and Hunting Federation shall suspend or dismiss, as the case may be, an affiliate club or member thereof for violating the regulations on safety and use of weapons and ammunition or other provisions established by the Command, or for violating the Code of Natural Resources.

Article 69. **Surrender of weapons.** Weapons and ammunition belonging to a club member who has been suspended or dismissed under the provisions of the preceding article shall be surrendered by the Colombian Shooting and Hunting Federation to the military authority which has jurisdiction in the place where the club is located, as indicated in article 64 of this Decree, within 10 days of the date the corresponding measure is communicated, for submission to and temporary storage in the Department for the Control of Trade in Firearms, Ammunition and Explosives of the General Command of Military Forces; the natural resources administrative authority shall be informed thereof.

Once 90 days have elapsed, if no one has expressed interest in retaining the weapons in accordance with the provisions of this Decree with regard to the issuance of licences, reimbursement may be made for their appraised value.

Title VIII
Firearms collections and collectors

Article 70. **Firearms collectors.** For the purposes of this Decree, a collector of firearms shall mean an individual or legal entity owning firearms which, by virtue of their historic, technological or scientific characteristics, may be displayed at private or public exhibitions and which the Arms Committee of the Ministry of Defence has classified as collectors' items.

Collectors may join legally established associations. Anyone who is not a member of any such associations must meet the requirements laid down by the National Government.

Collector status shall be accredited by both the association and the General Command of Military Forces in the case of association members, or by the latter if the collector is not a member of any association.

Article 71. **Weapons collectors' associations.** For the purposes set forth in this Decree, the term "weapons collectors association" shall mean a legal entity formed for the purpose of acquiring any type of collector weapons, promoting exhibits thereof and improving existing museums.

Article 72. **Storage.** Weapons collections must be kept in a stationary or immobile museum, where the proper security measures are in place in accordance with the regulations established by the Government.

Article 73. **Founding of associations.** In order to found an association of weapons collectors, interested persons must submit an application to the General Command of Military Forces, satisfy the requirements set out by the Government and obtain a favourable recommendation from the Arms Committee of the Ministry of Defence.

Article 74. **Oversight of associations.** Weapons collectors' associations shall be under the control and supervision of the military authorities which have jurisdiction over their place of operation. To this end, they shall carry out at least one inspection annually of each collection and shall draw up the corresponding certificate, a copy of which shall be sent, within 15 days, to the General Command of Military Forces; said inspection shall be carried out prior to the first day of December every year.

Article 75. **Accountability of Collectors.** Each collector is accountable to the Military Command of the jurisdiction for the safety and proper use of the weapons he possesses; associations shall ensure strict compliance with legal provisions in this regard.

The General Command of Military Forces shall establish the security measures to which collector weapons are subject as well as the measures to be adopted in the event of non-compliance.

Article 76. **Information to the authority.** The directors of each association shall submit in a timely manner to the Command of the Military Unit having jurisdiction over it — and the Command shall, in turn, submit to the Department for the Control of Trade in Firearms, Ammunition and Explosives — the list of persons who, for whatever reason, are no longer members, accompanied by the respective licences and cards to be cancelled. The information must be provided within 15 days from the date of the member's separation.

Any member who is dismissed from an association may apply to the Arms Committee for collector status.

Title IX
Surveillance and private security services

Article 77. **Use of weapons for surveillance and private security services.** Surveillance and private security services may use firearms in self-defence at a ratio of no more than one weapon for every three guards on the payroll and, exceptionally, restricted-use weapons, in accordance with the provisions of article 9, paragraph 2, hereof.

Article 78. **Qualifications for using weapons.** Anyone who provides armed surveillance or private security services must be trained in the use of weapons and accredited by the Superintendence of Surveillance and Private Security.

Article 79. **Possession and carrying of weapons.** Surveillance and private security services must obtain a licence to possess or carry weapons and acquire ammunition from the competent authority located in the place where the head office, branch or agency of the surveillance and private security service operates. Persons carrying weapons shall have the following documents:

(a) Valid identification card issued by the Superintendence of Surveillance and Private Security;

(b) Authentic photocopy of the corresponding licence to carry weapons.

Article 80. **Surrender of weapons.** Where surveillance and private security services are dissolved or their operating licence or card is revoked, they shall hand in their weapons, ammunition and corresponding licences to the General Command of Military Forces. The owner shall be reimbursed for the appraised value of the weapons and ammunitions handed in, unless their sale has been authorized.

Article 81. **Provisional surrender of weapons.** When the personnel of surveillance and private security services suspend their operations, their legal representative or his deputy shall so inform the Superintendence of Surveillance and Private Security, in writing within the next 10 days, and their weapons and ammunition shall be handed in to the local military unit. The latter shall have the weapons, ammunition and permits transferred to its facilities after drawing up the corresponding certificate.

Once work has resumed, the weapons, ammunition and permits shall be returned, upon request.

Article 82. **Surrender of unusable material.** Unusable or obsolete material may be handed in to the General Command of Military Forces together with the corresponding licence for dumping.

Title X
Seizure of weapons

Article 83. **Competence.** The following authorities are competent to seize weapons, ammunition, explosives and related accessories:

(a) All active-duty law enforcement officers in the discharge of their duties;

(b) Prosecutors, all judges, governors, mayors and police inspectors in their corresponding territories, through the Police, when they are aware of unauthorized ownership or bearing of a weapon, ammunition or explosive;

(c) The Agents of the Administrative Department of Security, in the discharge of their duties, and the members of the Judicial Police Units;

(d) Customs administrators and employees who inspect merchandise and baggage in the discharge of their duties;

(e) Prison guards;

(f) Commanders of vessels and aircraft during a voyage or flight, respectively.

Article 84. **Seizure of weapons, ammunition and explosives.** Failure to comply with the requirements set forth in this Decree with regard to the possession or carrying of weapons, ammunition or explosives and their accessories shall result in seizure. The seizing authority is required to give the owner a receipt indicating date and place, description and quantity of items seized (type, mark, calibre, number and state), and first and last names, identity document number and address of the person from whom the seizure was made, the quantity of cartridges, spent cartridges or other articles seized, the number and expiry date of the licence, the unit which carried out the seizure, reason therefor, and the signatures and name in print of the executing authority.

The authority that carries out the seizure shall turn in the weapon, ammunition or explosive and its accessories, together with the permit or licence and the corresponding report, to the competent official without delay.

Paragraph 1. Failure by the authorities to comply with the above provisions shall be viewed as misconduct and constitute grounds for disciplinary proceedings.

Paragraph 2. Explosives and detonating accessories shall be surrendered to an authorized magazine, where they will be stored or destroyed, depending on their state.

Article 85. **Grounds for seizure.** The following are grounds for seizure:

(a) Consuming liquor or using psychotropic substances while carrying weapons, ammunition and explosives in public;

(b) Carrying or transporting weapons, ammunition, explosives or their accessories while clearly drunk or under the influence of psychotropic substances;

(c) Carrying, transporting or possessing weapons, ammunition, explosives or accessories without the corresponding permit or licence;

(d) Carrying weapons, ammunition and explosives or accessories to political meetings, elections, meetings of public corporations, assemblies and popular demonstrations;

(e) Transferring weapons or ammunition without the proper authorization;

(f) Carrying or possessing weapons, ammunition, explosives or accessories after the respective permit or licence has expired;

(g) Carrying or possessing a weapon with an altered serial number where the permit does not note this;

(h) Allowing weapons, ammunition, explosives and accessories to be owned or carried in places other than those that are authorized;

(i) Possessing or carrying weapons with an altered permit or licence;

(j) Possessing or carrying a weapon the permit or licence for which is so worn that the information is not fully legible;

(k) Carrying, transporting or possessing weapons, ammunition, explosives or accessories without the proper permit or licence even though one has been issued for it;

(l) Carrying weapons, ammunition, explosives or accessories at public events;

(m) When the competent authorities believe that improper use may be made of weapons, ammunition, explosives and their accessories by the persons or entities that own them even though they are duly authorized.

For the purposes of the provisions of subparagraph (k) of this article, the owner of the weapon, ammunition, explosive or accessory which has been seized shall be given 10 days within which to submit the corresponding permit or licence, if he has it, and to request the restoration of the seized item; the latter shall be immediately delivered by the authorities.

Title XI
Fines and confiscation of weapons, ammunition, explosives and related accessories

Chapter I
Fines

Article 86. **Competence.** The following authorities are competent to impose fines:

(a) Any Major-General in the army or officer of equal rank in the navy and air force;

(b) Any commander of a Special or Unified Command;

(c) Any commander of a Tactical Unit in the Army or officer of equal rank in the navy or air force;

(d) Any police chief.

Paragraph 1. In the event of seizure, the authority competent to impose a fine shall be the respective military or police commander, as provided in this article, depending on whether the seizure was carried out by the military authority or the police.

Paragraph 2. Payment of fines shall be recorded in accordance with the instructions issued by the National Ministry of Defence.

Article 87. **Fines.** Anyone guilty of any of the following acts shall be subject to a fine equivalent to one month's legal minimum wage:

(a) [Failure to] renew a licence within 45 or 90 calendar days of its expiry, depending upon whether it is a licence to carry or to possess a firearm;

(b) Consumption of liquor or use of psychotropic substances while carrying weapons, ammunition, explosives and other accessories in public places;

(c) Failure to report, within the 30-day period established in this Decree, the loss or theft of the licence;

(d) Failure to submit a valid licence to the military authorities within 10 days from the date of execution of the seizure referred to in special clause 1 above;

(e) Failure to report the loss or theft of a weapon, ammunition, explosive or its accessories to the military authority within 30 days;

(f) Failure to comply with the security requirements for shipment established by the General Command of Military Forces when shipping weapons, ammunition or explosives;

(g) Allowing, in the case of legal entities, weapons, ammunition, explosives and accessories to be owned or carried somewhere other than the authorized place;

(h) Carrying, shipping or possessing weapons, ammunition, and explosives without the corresponding permit or licence, although one may have been issued;

(i) Failure to inform the military authority which issued the permit of a change in domicile within 45 days from the time it occurs;

(j) Brandishing or firing a firearm in public without justification, without prejudice to the penalties established by law.

Paragraph 1. In the case of subparagraphs (b) to (j) above, if a fine remains unpaid 30 days from the date the order to pay a fine becomes enforceable, the weapon, ammunition or explosive shall be confiscated.

Once the fine has been paid within the legally prescribed period, an order shall be issued for the return of any weapon, ammunition or explosive which may have been seized.

Paragraph 2. In the case of subparagraph (a) above, if the licence to possess a firearm is renewed between 90 and 180 calendar days after it expires, the fine established in the first paragraph of this article shall be doubled.

If the licence to carry the firearm is renewed between 45 and 90 calendar days from the time it expires, the fine established in the first paragraph of this article shall be doubled.

Chapter II
Confiscation

Article 88. **Competence.** The authorities competent to order the confiscation of weapons, ammunition, explosives and their accessories are as follows:

(a) All prosecutors and criminal judges where a trial is being conducted in connection with the weapon, ammunition or explosive;

(b) Any major-general or officer of equal rank in the navy or air force within their jurisdiction and any commander of a Special or Unified Command;

(c) Any Commander of a Tactical Unit in the Army or officer of equal rank in the Navy or Air Force;

(d) Any police chief.

Article 89. **Confiscation of weapons, ammunition, explosives and their accessories.** Violations punishable by confiscation are as follows:

(a) Carrying or possessing weapons, ammunition or explosives and their accessories without permission from the competent authority, without prejudice to any penalties which may apply;

(b) Carrying weapons, ammunition, explosives and their accessories or possession thereof in a building if the permit has expired for exceeding the 90- or 180-day period allowed for carrying or possessing same, as the case may be;

(c) Carrying or transporting weapons, ammunition, explosives and their accessories while clearly drunk or under the influence of psychotropic substances;

(d) Consuming liquor or using psychotropic substances while carrying weapons, ammunition and explosives and their accessories in a public place when one has already been fined for doing so;

(e) Carrying a weapon under a permit that authorizes ownership only, without prejudice to any penalties which may apply;

(f) Carrying weapons and ammunition where the respective permits have been suspended by decision of the Government, without prejudice to any penalties which may apply;

(g) Carrying or owning unauthorized ammunition, in which case the weapon, too, shall be confiscated, if appropriate, without prejudice to any penalties which may apply;

(h) Failing to surrender a weapon to the State within the established period when, by order of the competent authorities, the permit has been revoked;

(i) Attacking fauna and flora, the environment and special ecological areas with weapons, ammunition, explosives or accessories, including the weapons referred to in article 25 of this Decree;

(j) Shipping explosives without fulfilling the requirements established by the General Command of Military Forces;

(k) Delivering weapons for repair to weapons repair facilities that operate without the authorization of the General Command of Military Forces or delivering them without the relevant licence or authenticated photocopy thereof;

(l) Lending or allowing a third party to use a weapon, except in situations of imminent force majeure;

(m) Carrying weapons or ammunition, explosives or their accessories to political gatherings, elections, meetings of public corporations and popular demonstrations, without prejudice to any penalties which may apply;

(n) Failure by a person sentenced to imprisonment to surrender a weapon within the time period provided by special clause 2, article 40, above;

(o) Failure by surveillance and private security services to surrender weapons within 10 days from the date the order for termination or non-renewal of their respective operating licence becomes enforceable, unless the transfer of such licence to another company has been authorized. If weapons are surrendered within the prescribed time period, the Ministry of Defence shall provide reimbursement for their appraised value;

(p) Failure to pay the fine within the time period prescribed in the administrative document stating the penalty, where appropriate;

(q) Transferring use of the weapon, ammunition or explosive to a third party without authorization, whatever the reason.

Chapter III
Procedure

Article 90. **Administrative document.** The competent military authority or police officer shall order, by means of an administrative instrument, the return or confiscation of the weapon, ammunition, explosive or accessory with imposition of a fine within 15 days from the date of receipt of the report from the official who effected the seizure or reported the irregularity. This time period will be extended by another 15 days when evidence must be submitted.

Paragraph 1. The provisions of this article shall not apply to the imposition of fines set forth in article 87, paragraph (a), consistent with paragraph 2 thereof.

Paragraph 2. The return of restricted-use weapons of war, their ammunition and accessories that have been confiscated may be authorized solely by the General Command of Military Forces.

Article 91. **Remedies.** The remedies of reconsideration and appeal of the fine or confiscation may be invoked under the Administrative Code on Disputes.

The remedy of appeal shall be requested from the immediate superior of the authority who ordered the fine or confiscation.

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Letter dated 13 May 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 27 February 2004 (S/2004/149). The Counter-Terrorism Committee has received the attached fourth report from Cuba submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

04-36525 (E) 090704

Annex

[Original: Spanish]

Letter dated 13 May 2004 from the Permanent Representative of Cuba to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to transmit to you herewith the text of the report containing the replies of the Government of the Republic of Cuba in relation to the matters raised in your letter of 13 February 2004.

In submitting to you this fourth report, pursuant to paragraph 6 of Security Council resolution 1373 (2001), we reiterate the intention of the Government of Cuba to continue to cooperate with the Counter-Terrorism Committee (see enclosure).

(*Signed*) Orlando **Requeijo Gual**
Ambassador
Permanent Representative

Enclosure

[Original: Spanish]

Fourth report of the Republic of Cuba to the Counter-Terrorism Committee of the Security Council, submitted pursuant to paragraph 6 of resolution 1373 (2001)

1. Implementation measures

Effectiveness in the protection of financial system

I. Introduction

Cuba's banking and financial system and the central administrative organs of the State have continued to comply with the relevant laws, rules and regulations in order to prevent, detect and respond to any event which might be related to criminal activities such as corruption, money-laundering or the financing of terrorism.

One of the main tasks of the Central Bank of Cuba is to monitor the application of current regulations and of any new measures adopted in order to prevent and suppress illicit or criminal activities and suspicious transactions involving money-laundering and other unlawful activities, both in its relations with various bodies within Cuba and their operations and also at the international level.

In order to further strengthen measures for the prevention and suppression of any kind of criminal activity or possible money-laundering operations, the Central Bank has adopted as a major goal for 2004, inter alia, the establishment of an organizational unit for the recording and analysis of illegal acts, cases of corruption and other unlawful activities which might occur within the Cuban banking system. It is also planned that Compliance Officers should begin work, under the authority of the Central Bank, at the regional level (the eastern, central and western regions).

To the extent that it may be useful or desirable for both sides, the Central Bank of Cuba is willing to exchange information with counterpart authorities in any country, on either an intermittent or a regular basis, provided that this takes place on the basis of mutual respect and in a spirit of cooperation.

1.1 Regarding the effective implementation of subparagraph 1 (a) of the resolution, the CTC would appreciate knowing whether the Republic of Cuba provides its administrative, investigative, prosecutorial and judicial authorities with specific training aimed at enforcing its laws in relation to:

- **Typologies and trends aimed at countering terrorist financing methods and techniques;**
- **Techniques for tracing property which represents the proceeds of crime or which is to be used to finance terrorism, with a view to ensuring that such property is frozen, seized or confiscated.**

Please also outline the relevant programmes and/or courses in these areas. The CTC would further appreciate receiving information regarding any mechanisms/programmes that the Republic of Cuba has put in place to train its various economic sectors in the detection of unusual and suspicious financial

transactions related to terrorist activities and in the prevention of the movement of illicit money.

By Decision No. 91/1997 of its Minister-President, the Central Bank of Cuba introduced a guide to assist members of the national banking system in the prevention and detection of illicit capital movements. Section VIII of the guide provides for personnel to be trained in the implementation of the rules set out therein.

Subsequently, the Superintendent of the Central Bank issued Instruction No. 8/2001, which requires financial institutions to conduct two-day study sessions at least twice a year, to familiarize staff with the current rules applying to financial institutions and their hierarchy down to the branch-office level.

To that end, workshops have been conducted at the provincial and national levels, with presentations on the prevention and suppression of money-laundering activities.

The National Banking Training Centre of the Central Bank of Cuba has conducted a number of courses, including diploma and postgraduate courses, with senior trainers of various nationalities teaching modules on money-laundering. As part of the various diploma courses, Cuban banking specialists prepared theses on subjects related to the prevention and suppression of money-laundering.

For 2004, there are plans to organize a national risk-assessment event, and a number of study and discussion workshops are to be held at both the provincial and the national levels. At these meetings, various papers will be presented and analysed on the prevention and suppression of money-laundering operations and other criminal activities, whether or not they are related to possible terrorist financing activities.

The recommendations of the Financial Action Task Force on Money Laundering (FATF) on the financing of terrorism have been circulated and studied. They have always been taken into account in the drafting by the Central Bank of Cuba of rules for the prevention and detection of possible money-laundering operations, regardless of the destination of the assets concerned, to ensure that they are borne in mind in planning the training of banking-sector personnel.

The following documents of the Basel Committee on Banking Supervision (BCBS) have been circulated and studied: "Customer due diligence for banks", of October 2001, and "General Guide to Account Opening and Customer Identification", of 10 February 2003.

In case any attempt were made to use the country's banking system for illicit financial transactions, and with due regard for Central Bank regulations, banks based in Cuba have included in their manuals of instructions and procedures the necessary techniques for preventing and detecting any kind of illicit operation originating outside Cuba.

The central administrative organs of the State, in accordance with their functions, characteristics and financial activities, design training programmes on the prevention of illegal operations originating in other countries. These programmes are to a considerable extent based on the Central Bank's annual guidelines on financial policy for transactions involving foreign countries, which include a

number of considerations on fraudulent activities in external financing operations, and recommendations for their prevention.

1.2 In regard to subparagraph 1 (a) of the resolution, the CTC would appreciate receiving the number of suspicious transaction reports (STRs) received by the Bank Oversight Office of the Central Bank of Cuba and other competent authorities, with particular regard to STRs from:

- **The insurance sector;**
- **Money remittance/transfer services;**
- **Foreign exchange bureaux.**

Please also indicate the number of STRs analysed and disseminated, as well as the number of those that have led to investigations, prosecutions or convictions. Do authorities in the Republic of Cuba audit financial institutions to verify compliance with requirements to submit suspicious transactions reports? Are foreign exchange bureaux and remittance agencies routinely audited? How often are financial institutions subject to such audits?

In 2003, Cuban financial institutions detected no suspicious transactions relating to the financing of terrorism.

Transfers to and from Cuba via our correspondent banks are effected through the SWIFT system. To date, no suspicious transactions have been detected in our systematic monitoring of such transfers, with due regard for banking secrecy.

The Bank Oversight Office of the Central Bank of Cuba carries out regular inspections of financial institutions based in the country. These inspections take place annually in the case of commercial banks, and at least every 18 months for non-banking financial institutions and the representative offices of foreign banks. No financial connection between these Cuban financial entities and terrorist individuals or groups has ever been detected.

Cuban banks have an internal auditing organ which carries out a yearly programme to monitor compliance with their manuals of instructions and procedures, and with the regulations of the Central Bank and of the other central administrative organs of the State, in relation to financial oversight and commerce with foreign countries.

Cuban financial institutions are also audited annually by external auditing firms duly authorized by the Ministry of Auditing and Control and the Bank Oversight Office of the Central Bank of Cuba.

Some banks are also audited by the international firm Ernst and Young.

1.3 Within the context of the effective implementation of subparagraph 1 (a) of the resolution, the CTC would be grateful for an explanation of the rules for identifying persons or entities which maintain bank accounts, on whose behalf a bank account is maintained (i.e., the beneficial owners), or who are the beneficiaries of transactions conducted by professional intermediaries, as well as any other person or entity connected with a financial transaction. Please outline any procedures that enable foreign law enforcement agencies or other counter-terrorist entities to obtain such information in cases where terrorist links are suspected.

In November 2002, the Superintendent of the Central Bank issued a new guide tailored to the characteristics of Cuban financial institutions, in order to step up their work on the "know your customer" principle.

The financial transactions of all individuals and entities, both Cuban and foreign, residents and non-residents, having a financial interest in Cuba, are conducted through the opening of accounts with Cuban banks, the only ones authorized by the Central Bank to accept funds and open accounts.

To open an account of any kind, the customer must sign a contract in which his rights and obligations are set out. In addition, the banks comply with the "know your customer" model.

Should a customer's financial transactions fall outside the parameters of his declared financial activities or his usual behaviour, he is required to fill in a declaration on the origin and destination of the funds.

The opening of accounts with Cuban banks is governed by Central Bank regulations, which establish the minimum requirements that must be met by would-be customers before they are accepted. The opening of an account is not automatic; time is required for the necessary information to be obtained, particularly when the potential customer is foreign or is a Cuban based abroad.

Cuba remains willing to cooperate with any country in combating the financing of international terrorism, in accordance with its national legislation, international law and the Charter of the United Nations. Any cooperation or exchange of information between the Central Bank of Cuba and international bodies or interested States will take place through the signing of agreements or by other means, based on the premises of mutual respect and the usefulness or appropriateness of such cooperation for both parties.

1.4 In relation to money-laundering and the financing of terrorism, the CTC would be grateful to receive an outline of any special strategy that the Republic of Cuba may have developed with a view to enabling its investigatory agencies effectively to prevent resources from being transferred to terrorists (e.g., under-invoicing of exports and the over-invoicing of imports, manipulation of high-value goods like gold, diamonds, etc.). What appropriate mechanisms has Cuba created (e.g., a "task force") to ensure adequate cooperation and information-sharing among the various government agencies that may be involved in investigations of terrorist financing (e.g., police, customs, the Bank Oversight Office of the Central Bank of Cuba and/or other competent authorities)?

The Central Risk Information Office of the Central Bank of Cuba is the body responsible for receiving information on suspicious transactions from financial institutions. The Office carries out cooperation and exchanges of information as needed with the competent entities of the Ministry of the Interior, the Attorney-General, customs and other central government agencies in relation to any criminal activity or possible money-laundering operation, which may or may not be related to a possible terrorist financing activity, in order to ensure that the Cuban financial system cannot be used for activities of this type.

There are no private entities in Cuba which engage in trade involving the sale of gold, diamonds or other high-value goods, nor are any authorized to do so.

The blockade imposed since the early 1960s by the Government of the United States of America on Cuban financial and commercial operations does not allow our banks to correspond with American banks in United States territory and vice versa. This is not the case, however, with financial institutions in other countries, with which Cuban banks do have correspondent relations.

Moreover, the Central Risk Information Office of the Central Bank of Cuba, which supplements the work of the banks, keeps the financial institutions up-to-date regarding the lists of alleged terrorist individuals and entities drawn up by United Nations bodies in order to avoid any transactions which might be aimed at providing them with financing. The banks and non-bank financial institutions have instructions from the Superintendent to consult the United Nations web site directly in order to remain up-to-date on changes to these lists.

In addition, a committee established in late 2003 by the Technical Council on Fraud Prevention is working on a revision of the regulations of the Central Bank of Cuba with a view to the prevention and detection of possible money-laundering operations which may or may not be related to a possible terrorist financing activity.

Banks and non-bank financial institutions also comply with international "know your customer" practices by carrying out the following due diligence obligations:

(a) Making a reliable identification of probable clients and filling out the "know your customer" form;

(b) Monitoring the client's financial transactions in order to detect unusual transactions;

(c) Keeping and preserving information on clients and their identity while financial transactions are being carried out and for five years following the last transaction;

(d) Reporting any suspicious transactions to the competent authorities.

In this connection, see also the reply to question 1.9 concerning anti-terrorist strategies.

1.5 The CTC notes from the supplementary report (at p. 3) that lawyers and notaries in Cuba are not authorized to engage in any form of financial transaction. Please outline whether this prohibition also addresses the situation when lawyers, notaries, other independent legal professionals and accountants prepare transactions for their clients, involving the following activities:

- **Buying and selling real estate;**
- **Managing a client's money, securities or other assets;**
- **Management of bank, savings or securities accounts;**
- **Organizing contributions for the creation, operation or management of companies;**
- **Creation, operation or management of legal persons or arrangements, and buying and selling of business entities.**

Please outline any existing provisions that may apply to the above situations. In the absence of any such provisions, please indicate the measures that the

Republic of Cuba intends to take in order fully to meet the requirements of this aspect of the resolution. Please also provide the CTC with an outline of the legal provisions in place that require other financial intermediaries (real estate agents, dealers in precious metals and stones, trust and company service providers) to identify their clients and to report suspicious transactions to the relevant authorities.

In Cuba any financial transaction related to receiving deposits and opening bank accounts of any type may be carried out only through Cuban banks. Non-bank financial institutions and branches of financial institutions established in Cuba are not authorized to accept deposits or open accounts for clients; they may only carry out financing operations authorized under the licence granted to them by the Central Bank of Cuba.

There are no lawyers, notaries or accountants in private practice in Cuba. The legal profession is regulated by Decree-Law No. 81 of 8 June 1984 promulgated by the Council of State. In its article 5, the Decree-Law defines the National Organization of Law Collectives, which is an independent national entity of a socially useful and professional character, with legal personality and its own funding. Its membership is composed of lawyers and is voluntary. It is regulated by the aforesaid Decree-Law, the supplementing legislation thereto, and the resolutions and decisions of its governing bodies.

Lawyers are free to practice in Cuba. In the performance of his duties a lawyer:

(a) Is independent and owes obedience only to the law;

(b) Enjoys full legal rights and guarantees in expounding arguments based in law;

(c) Contributes to the attainment of justice through the observance and strengthening of socialist legality;

(d) Participates in the social education of his clients and of all citizens and in respect for the rights established by law.

Furthermore, a notary is recognized in Cuba as a public official authorized to witness extrajudicial legal transactions in which he is called upon to participate as provided by law. A notary practises his profession within the geographical area determined by his appointment. In the performance of his duties he owes obedience to the law and his conduct must comply with socialist legality. Only an official appointed in accordance with Act No. 50 (Government Notaries Act), adopted by the Cuban National Assembly of People's Power on 28 December 1984, may practise as a notary; the Act regulates notarial functions and practice in Cuba and is the basis for the establishment of the entire network of notaries in the country.

A notary may not hold another post or job, whether elective or appointed, which carries with it governmental, administrative or executive functions, with the exception of a post in the Ministry of Justice, a teaching or scientific post, or a post as delegate or deputy to the organs of People's Power; in the latter two cases, if a notary occupies an executive post in those bodies, he may not practise as a notary.

With the adoption of Act No. 77 of 20 January 1984, non-governmental law offices were established to provide various services to foreign individuals and

entities, Cuban citizens residing in foreign countries, and mixed enterprises and other economic associations authorized by Decree-Law No. 50 of 15 February 1982 and later by the Cuban Investment Act. Because of the high degree of professional specialization which they required, such services were to be provided exclusively by the entities established under Decree-Law No. 50.

Following the promulgation of the Decree-Law, various legal services firms were established to provide services on an exclusive basis, including notarial services, to foreign individuals and entities, Cuban citizens residing abroad, and mixed enterprises and other types of economic associations.

On the basis of the foregoing, interested nationals of other countries can contract the services of a lawyer or notary who can, through a power of attorney or an express designation, carry out transactions on behalf of his client with Cuban financial institutions in any trade deals carried out in the country.

Resolution Nos. 27 and 28 of the Central Bank of Cuba, dated 6 June 2002 and published in the Official Gazette (copies of which are annexed hereto), regulate all matters involving the import and export of precious metals and stones.

1.6 The CTC notes from the third report (at p. 4) that if a request is issued by another country for the freezing of funds of non-resident persons and entities supporting terrorism abroad, the Central Bank of Cuba is free to cooperate with such request. In this regard, please indicate whether the Republic of Cuba has enacted specific authority to freeze the assets of terrorists and terrorist organizations that are on lists other than that issued pursuant to Security Council resolutions 1267 (1999) and 1333 (2000). The CTC would appreciate receiving copies of the laws and regulations that are relevant to this area. Please also outline the procedure used to proscribe foreign terrorist organizations (other than those listed by the Security Council), if any. The CTC would appreciate receiving data regarding the number of such organizations involved and/or corresponding examples. How long does it take to proscribe a terrorist organization on information supplied by another State? In regard to compliance with subparagraph 1 (c) of the resolution, could the Republic of Cuba provide the CTC with statistics showing how much property was frozen, seized, and/or confiscated in relation to the financing of terrorism? Could the Republic of Cuba provide this information in regard to individuals or entities designated in lists produced by any and all of:

- **Security Council;**
- **Any States or other international organizations?**

Law No. 93 (Law against Acts of Terrorism[1]) provides in its article 8 that the pre-trial judge, the government attorney or the court, depending on the stage at which the proceedings relating to offences covered by the Law are, may issue forthwith an order for the preventive attachment or freezing of the funds and other financial assets, or of economic assets or resources of the defendants, irrespective of the degree to which they have participated in the punishable act, and of any persons or entities that have acted on behalf of the defendants and entities under the defendant's orders, including funds obtained or arising from assets belonging to or

[1] See Law No. 93 (Law against Acts of Terrorism) in Cuba's first report to the Committee (S/2002/15), pp. 36-43.

under the control, direct or indirect, of the defendants and of persons and entities associated with them.

Likewise, article 9 of the Law provides that in respect of the offences envisaged therein the court may, as an accessory penalty, order the confiscation of the defendant's assets, as provided for in article 44 of the Penal Code.

Furthermore, Instruction No. 19 of the Superintendent of the Central Bank of Cuba provides, in its Recommendation No. 6, for "preventive action by blocking or freezing the funds and other financial assets of Cuban or foreign individuals or legal persons under suspicion".

Up to now Cuban banks have not frozen, seized or confiscated property in relation to the financing of terrorism.

Cuba remains willing to cooperate with any country in combating the financing of international terrorism in accordance with its domestic law, international law and the Charter of the United Nations.

In its second report to the Committee (S/2002/1093), Cuba reported the entry into force of Instruction No. 19 of the Superintendent of the Bank of Cuba,[2] containing "Recommendations for combating the financing of terrorism". In drafting these recommendations, Cuba took into account the eight recommendations of the Financial Action Task Force (FATF). A copy of the resolution is annexed to this report.

1.7 In regard to the implementation of subparagraphs 1 (a) and (c) of the resolution, as well as article 8 of the International Convention for the Suppression of the Financing of Terrorism, the CTC would be grateful if the Republic of Cuba would outline its principal legal procedures concerning the confiscation of assets or the operation of other dispossession mechanisms. Please describe how these procedures operate in practice and please indicate which authorities are responsible for their implementation. Please also advise whether, under Cuban law, it is possible to confiscate the proceeds of a crime without first obtaining the conviction of its perpetrator (i.e., in rem confiscation). If not, does the Republic of Cuba envisage introducing such a system? The CTC would welcome receiving a description of the considerations which would normally form part of a review of the decisions taken by the authorities referred to earlier in this paragraph. Please describe how the Republic of Cuba deals, in its laws and procedures, with requests from foreign States for international legal assistance in relation to confiscation measures arising out of terrorist offences.

In Cuba the seizure or confiscation of assets deriving from criminal activities linked to terrorist acts takes place pursuant to a final decision handed down at a criminal trial by a competent court. In its decision the court orders the disposal of the property and assets that are subject to seizure or confiscation. Up to now the Republic of Cuba has not decided to introduce a system of the kind referred to above (confiscation in rem).

[2] Instruction No. 19 of the Superintendent of the Bank of Cuba is annexed to this report.

In accordance with the Law against Acts of Terrorism, the court may, pursuant to a final decision, order as an accessory penalty the confiscation of the defendant's assets, as provided for in article 44 of the Penal Code.

Requests from other States for international legal assistance in relation to confiscation measures arising out of terrorist offences are governed by the provisions in force of the bilateral agreements on judicial assistance signed by Cuba and by the provisions of the Law on Penal Procedures.

In this connection, see also the reply to questions 1.13 and 1.6 concerning measures to establish the liability of natural and legal persons for criminal offences, in particular offences related to terrorist activities.

1.8 The Committee would appreciate receiving a progress report on:

- **The amendment of Decree-Law No. 202 (p. 11 of the first report);**
- **The enactment of a new decree-law on arms and ammunition which deals in greater depth with international trade matters (p. 8 of the supplementary report);**
- **The accession to the Treaty on the Non-Proliferation of Nuclear Weapons and the ratification of the Treaty for the Prohibition of Nuclear Weapons in Latin America (p. 16 of the supplementary report).**

Since the submission of Cuba's first report to the Committee, two legislative instruments have been enacted to supplement Decree-Law No. 202 of 24 December 1999 on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. These are:

- Resolution No. 15 of the Ministry of Science, Technology and the Environment, of 17 February 2003, which approves and brings into force the "Regulation for national inspections and arrangements for international inspections".
- Resolution No. 32 of the Ministry of Science, Technology and the Environment, of 31 July 2003, which approves and brings into force the "Regulation for applying the national monitoring system for chemical substances covered by the Chemical Weapons Convention, the grant of licences and permits and the handling of information".

Likewise, the new Decree-Law on arms and ammunition, which will deal in greater depth with international trade matters, is now in the final stages of preparation before being submitted for approval to the relevant authorities.

Additionally, although the United States of America, the only nuclear power in the Americas, is maintaining a policy of hostility towards Cuba which does not exclude the use of force, on 23 October 2002 the Republic of Cuba deposited its instrument of ratification of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, more commonly known as the Treaty of Tlatelolco, which it had signed in 1995. With the ratification by Cuba, Latin America and the Caribbean have become the first densely populated area of the planet to be completely free of nuclear weapons.

Furthermore, on 4 November 2002 Cuba deposited its instrument of accession to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), although it

regards this instrument as flawed from the outset as well as essentially selective and discriminatory.

Cuba's positions of principle did not change when it became a State party to the NPT. Our country has decided to work from within the Treaty to provide impetus for achieving the priority goal in disarmament recognized by the United Nations: the complete elimination of nuclear weapons. Many people consider the Non-Proliferation Treaty to be an end in itself. For Cuba, it is only a step on the road to nuclear disarmament.

In our opinion, military doctrines which rely on the possession of nuclear weapons are unsustainable and unacceptable. No country or group of countries should be allowed to have a monopoly in these weapons or to develop them in either number or kind. Only when the objective of complete elimination of all nuclear weapons is achieved will the conditions be right for ensuring equal safety for all.

Cuba's accession to the NPT and its ratification of the Treaty of Tlatelolco are testimony to its peaceful intentions and to the political will and commitment of the Cuban State to promoting and strengthening the United Nations, to multilateralism and the international treaties on disarmament and arms control, and to an effective disarmament process which will guarantee world peace.

Although Cuba became a party to the NPT and to the Treaty of Tlatelolco in 2002, the Government of Cuba has never planned to develop or possess nuclear weapons. Our defence planning has never relied on the possession of nuclear weapons or of other weapons of mass destruction. The principles ushered in with the victory of the Socialist Revolution in 1959 are diametrically opposed to whatever contributes to the existence of these weapons.

Cuba's only interest in nuclear energy relates to its peaceful use subject to verification by the International Atomic Energy Agency (IAEA). Cuba will therefore continue to defend vigorously the inalienable right of all States to engage in the research, production and use of nuclear energy for peaceful purposes, and to receive transfers of materials, equipment and scientific and technological information for those purposes, without discrimination of any kind.

Lastly, Cuba wishes to make clear that a United States naval base is located, against the will of the Cuban people and Government, in the province of Guantanamo, a portion of Cuban territory over which the Cuban State does not exercise the jurisdiction pertaining to it because of its unlawful occupation by the United States of America. In consequence, the Government of Cuba does not take any responsibility for this territory for the purposes of the Treaty, since it does not know whether the United States has installed, possesses, maintains or intends to install nuclear material or nuclear weapons on this portion of Cuban territory which is unlawfully occupied.

Effectiveness of counter-terrorism

1.9 Effective implementation of legislation related to covering all aspects of Security Council resolution 1373 requires States to have in place effective and coordinated executive machinery, as well as to create and utilize adequate national and international anti-terrorist strategies. In this context the CTC would appreciate knowing whether Cuban counter-terrorism strategy and/or

policy targeting (at national and/or subnational level) deals with the following forms or aspects of counter terrorist activity:

- **Criminal investigation and prosecution;**
- **Counter-terrorist intelligence (human and technical);**
- **Special forces operations;**
- **Physical protection of potential terrorist targets;**
- **Strategic analysis and forecasting of emerging threats;**
- **Analyses of efficiency of anti-terrorist legislation and relevant amendments;**
- **Border and immigration control, control preventing the trafficking in drugs, arms, biological and chemical weapons, their precursors and the illicit use of radioactive materials;**
- **Coordination of State agencies in all those areas.**

If possible, the Republic of Cuba is requested to outline the legal provisions and other administrative procedures as well as the best practices that are applicable in these areas.

Cuba, which has been the victim of numerous terrorist acts since 1959, most of which have been devised, organized and financed with complete impunity from the territory of the United States of America, and on many occasions by the Government of that country or with its express support, has considerable experience in dealing with this scourge.

This experience has enabled it, until now, to prevent or foil over 630 organized attacks on the life of the President of the Republic, and hundreds of other terrorist acts, many of which were mentioned in the first report submitted by Cuba to the Committee (S/2002/15)[3] and in the Declaration on the implementation by Cuba of the Declaration on Measures to Eliminate International Terrorism,[4] among other documents.

The counter-terrorism strategies and policies adopted by Cuba are consistent with the provisions of paragraphs 1, 2, 3 and 4 of Security Council resolution 1373 (2001), other resolutions of the Security Council on combating terrorism, the resolutions of the General Assembly of the United Nations, including the "Declaration on Measures to Eliminate International Terrorism" contained in the annex to its resolution 49/60 of 9 December 1994, the international instruments on this subject to which Cuba is a party, and national legislation.

In this connection, it should be noted that Cuba's national legislation on this and other subjects is kept under constant review so that its effectiveness can be enhanced. Strategic analysis and threat prevention make it possible to weigh up and assess the physical protection of possible terrorist targets, and to improve intelligence data and the operations of other forces on a continuing basis, in order to

[3] See Cuba's first report to the Committee (S/2002/15), pp. 78-132.

[4] See the letter dated 16 June 2003 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General (A/57/841).

attain the objective of preventing, combating and eradicating terrorism against Cuba in all its forms and manifestations, from wherever it may come.

This effort includes gathering, processing and analysing intelligence data (human and technical) about terrorism; using special forces when necessary; the physical protection of potential terrorist targets; and the strategic analysis and forecasting of emerging threats.

The Border Guard troops have devised a protection system which ensures daily coverage for key strategic targets on the coast (power plants, major fuel deposits, naval vessels and tourist sites) and for the capital. This system includes radar and visual reconnaissance and naval patrols opposite these targets.

In addition, tankers passing through our territorial waters are monitored by means of visual and radar reconnaissance, and naval protection is provided for tankers and other working vessels when in port. Sea and land-based protective measures are also carried out in coastal and maritime areas where oil prospection and extraction is in progress.

Access to harbour installations is restricted, the Port Authorities being responsible for issuing entry permits. Most vessels are searched on entering and leaving port by the Port Authorities and Customs Service, in order to detect the presence of weapons, explosives, drugs and other materials or substances capable of being used in terrorist activities.

Plans are also being drawn up to deal with attempted attacks or robberies on ships in port, naval vessels and docks and sites for recreational fishing. For this purpose, the Port Authorities carry out regular checks on the security and protection systems of vessels at anchor in port, and verify compliance with the measures laid down in the anti-hijacking plans devised by the shipowners. They also carry out measures to monitor access to harbour installations and ships in port.

With regard to immigration control, Act No. 1312/76 on migration and its accompanying Regulation (Decree No. 26/78) stipulate that in order to travel to Cuba, a foreign citizen must hold a valid passport issued by a competent authority, and an entry visa. Cuban consulates abroad grant visas on the basis of the reasons stated by the applicant and their own evaluation of these, in consultation with the national authorities. During their stay in Cuba, foreigners may only pursue activities consistent with the conditions attached to their entry visa. Foreigners who fail to comply with the requirements laid down by immigration law for admission to the country are sent back to the country they came from.

Criminal investigation and indictment also form part of the counter-terrorism strategy. The steps to be taken against the perpetrators of terrorist acts are laid down in current legislation on the subject, including the Penal Code, the Law against Acts of Terrorism and the Law on Penal Procedures, which specify, inter alia, the safeguards applying to the accused and their rights during criminal proceedings.

Moreover, as part of the experience gained by Cuba in dealing with terrorism, close cooperation has been encouraged among national authorities engaged in the various aspects of counter-terrorism. This extends to a system of border and immigration controls to prevent trafficking in drugs, arms, biological and chemical weapons and their precursors, and the illicit use of radioactive materials.

It goes without saying that Cuba's strategies in countering terrorism are not geared only to preventing and combating terrorist acts committed against the Cuban people, but also to ensuring that the national territory is not used for committing terrorist acts against any other country.

The laws enacted by the Republic of Cuba in the years 1959-2001 to prevent and combat terrorism can be consulted in the first report to the Committee (S/2002/15), pages 6-14.

That report, on pages 31-77, covers the laws and other measures adopted by Cuba in the struggle against international terrorism after the adoption of Security Council resolution 1373 (2001).

1.10 Regarding the reference in the supplementary report to articles 110, 111 and 112 of the Penal Code (at p. 11), please outline how those legal provisions address recruitment to terrorist bodies through deception, such as representation that the purpose of recruitment is different from the true purpose (e.g. teaching).

Article 110 of the Penal Code refers to enlistment and other acts hostile to a foreign State which may create a risk of war or measures of reprisal against Cuba, or which expose Cubans to humiliation or reprisals against their persons or property, or which impair Cuba's friendly relations with another State.

In addition, as explained in Cuba's supplementary report (S/2002/1093), article 5 of the Law against Acts of Terrorism specifies that the following are punishable:

- Trying to involve others in acts of terrorism;
- Plotting with one or more persons to commit the offences prohibited by the provisions of the Law;
- Inciting or inducing someone to commit such offences.

As regards acts of recruitment, trying to involve others in acts of terrorism, plotting with others and inciting or inducing someone to commit such offences, it is sufficient to prove that the person carrying out these acts is doing so with the intention of committing a criminal act of a terrorist nature. This type of conduct is punishable not only for the act itself, but also for preparatory acts and attempts, as required by article 5 of the Law against Acts of Terrorism and articles 12 and 13 of the Penal Code.

On the other hand, where a person has been recruited through deception to commit criminal acts of a terrorist nature, only the court dealing with such a case may decide, on the basis of the evidence submitted in the proceedings, whether the error is a ground for exemption from criminal responsibility, as defined in articles 23 and 24 of the Penal Code.

Article 111 of the Penal Code refers to the recruitment of persons in Cuba, without the permission of the Government, for military service on behalf of a foreign State. Article 112 refers to the commission on Cuban territory of an act designed to threaten the independence of a foreign State, the integrity of its territory or the stability or reputation of its government.

1.11 In the context of the effective implementation of subparagraph 2 (e) of the resolution, the CTC would appreciate knowing which special investigative techniques may be used in the Republic of Cuba in relation to terrorism (e.g. interception of communications; electronic surveillance; observation; undercover operations; controlled delivery; "pseudo-purchases" or other "pseudo-offences"; anonymous informants; cross-border pursuits, bugging in private or public premises, etc.). Please explain what these techniques consist of, as well as the legal conditions that govern their use. The CTC is also interested in learning details such as: whether the use of these techniques is restricted to actual suspects; whether they may only be utilized with the prior approval of a court; whether there is a limit to the time-period in which they may be used. Could Cuba further indicate whether, and if so how these techniques could be used in cooperation with another State?

In Cuba the use of special investigative techniques is currently under consideration and their inclusion is being assessed in the framework of continual improvements to our antiterrorist legislation.

1.12 With a view to bringing terrorists and their supporters to justice, the CTC would be grateful to know whether Cuba has taken measures to protect vulnerable targets involved in the prosecution of terrorist crime (e.g. protection of victims, of persons collaborating in the pursuit of justice, of witnesses, of judges and prosecutors). Please describe the legal and administrative provisions put in place to ensure the protection of such persons. Could the Republic of Cuba also indicate whether, and if so how these measures could be utilized in cooperation with, or at the request of another State?

In Cuba it has not been necessary to implement special programmes to protect victims, witnesses or other persons involved in the prosecution of terrorist crimes. There have been no cases to date of persons in the above-mentioned categories who have been assaulted or harmed due to their participation in this type of criminal proceedings.

However, article 142 of the Cuban Penal Code establishes as an offence "*the use of violence or intimidation against any person who might have contributed, as a witness or in any other way, to the implementation or application of laws or general provisions*". The same article also establishes sanctions in cases where violence or intimidation are exercised against a person's relatives for the purposes of revenge or reprisals.

1.13 In regard to the effective implementation of article 5 of the International Convention for the Suppression of the Financing of Terrorism, please indicate whether the Republic of Cuba has undertaken measures to establish the civil, criminal or administrative liability of legal persons for criminal offences, in particular offences related to terrorist activities. Is it possible to assign liability to a legal person, in a case where no natural person has been identified or convicted?

Article 16.3 of the Cuban Penal Code establishes that "*legal persons shall be criminally liable for those offences set forth in this code or in special laws which are committed within the sphere of action of the said legal persons when such offences are perpetrated by representatives or associates by agreement, without prejudice to the individual criminal liability incurred by the perpetrators or accomplices.*"

Furthermore, article 16.4 of the Code establishes as follows: "*legal persons shall be subject to criminal liability in relation to cooperatives, legally constituted companies and associations, foundations, non-State companies that are authorized to carry out their activities, and other non-State entities that are conferred the status of legal person by law.*"

In this regard, it should be noted that articles 106 to 109 of the Penal Code define the offence of terrorism. Furthermore, Law No. 93 (Law against Acts of Terrorism) is a special criminal law and, under article 2 thereof, the regulations of the General Part of the Penal Code are applicable to it. It is therefore possible for a legal person to be subject to criminal liability in cases where it has participated in criminal acts relating to terrorist activities.

On the other hand, in relation to the civil liability of legal persons, article 95 of the Cuban Civil Code establishes as follows:

> "*ARTICLE 95.1. Legal persons shall be obliged to compensate for damages caused to other persons by illicit acts committed by their directors, officials and other workers in the exercise of their functions, without prejudice to their right to recover from the guilty party.*
>
> *2. If the illicit act constitutes an offence and is committed by the directors, officials or other workers in the improper exercise of their duties, the legal person shall be liable subsidiarily.*
>
> *3. The legal person shall also be liable for damages caused by its directors, officials or other workers who have acted in the exercise of their duties or with due obedience and who, owing to that circumstance, have been declared exempt from criminal liability.*"

In addition, the following legal obligations relating to the liability of both natural and legal persons should be cited:

(*Penal Code*) Article 70.1. "*A person who is criminally liable shall also be civilly liable for damages caused by an offence. The court that is trying the offence shall rule on civil liability and its extent, applying the corresponding rules of civil law (...).*"

Law against Acts of Terrorism. Article 9. "*For the offences set forth in this law, the court may confiscate the convicted person's goods as a supplementary penalty, under the provisions of article 44 of the Penal Code.*"

(*Penal Code*) Article 44.1. "*The penalty of confiscation of goods shall consist in dispossessing the convicted person of goods, either totally or partially, and transferring them to the State.*"

2. "*The confiscation of goods shall not include, however, goods or objects that are essential for satisfying the vital needs of the convicted person or of dependent relatives.*"

3. "*The penalty of confiscation of goods shall be applied at the court's discretion for offences against State security, against patrimonial rights and against the national economy. On a compulsory or discretionary basis, the penalty shall also be applicable to other offences provided for in the Special Part of this Code, as may be established.*"

Law on Penal Procedures. Article 275. "*Action to claim civil liability arising from the offence shall be jointly brought with criminal liability claims, except in those cases where there is an injured person whose testimony depends on his/her health. In that case, an indictment shall be made and the court shall continue with trial proceedings until it reaches a verdict in which, without pronouncing on civil liability, it shall instruct the injured party on bringing corresponding action before the competent civil court at the appropriate procedural time.*"

Law on Penal Procedures. Article 276. "*Without prejudice to the provisions of the previous article, abatement of criminal action shall not include abatement of civil action, and the person concerned may bring action in the appropriate way and form, except where the enforceable sentence declared that civil action could not be initiated.*"

Law on Penal Procedures. Article 277. "*The examining magistrate, the court or the public prosecutor may at any stage of the proceedings, ex officio or upon application by the party concerned, have at its disposal by legal ruling the precautionary measures of bail, seizure and confiscation of goods of the accused party or of a liable third party, as might be necessary to ensure the future enforcement of a sentence in relation to civil liability.*"

Effectiveness of customs, immigration and border controls

1.14 Subparagraph 2 (c) of the resolution requires States to deny safe haven to terrorists and their supporters. In this regard, could the Republic of Cuba please provide the CTC with an outline of the legislative provisions regarding the granting of citizenship or other civic rights? Can a foreigner, who is granted citizenship, change his/her name? What precautions are taken to establish the true identity of a person before new identity papers are issued to that person?

Legislative provisions relating to the granting of citizenship or other civic rights

In Cuba legislative provisions relating to the granting of citizenship or other civic rights are contained in the Republic's Constitution; Law No. 59/1987, Civil Code; Law No. 51/85 on the Registration of Civil Status; Resolution No. 157/85, which provides its regulations; Decree No. 358 of 4 February 1944 on Citizenship Regulations and its supplementary provisions.

Under article 41 of the Constitution, all Cuban citizens enjoy equal rights and are subject to the same duties. A foreign citizen who acquires Cuban citizenship, in accordance with the requirements established by law, will therefore enjoy the same rights as native-born Cuban citizens.

Cuban citizenship is acquired by birth or by naturalization. Under article 29 of the Constitution, the following persons are considered native-born Cuban citizens:

(a) "*Those born in national territory, with the exception of the children of foreigners who are working in the service of their government or international organizations. The law establishes requirements and formalities for the cases of children of temporary foreign residents in the country;*

(b) *Those born overseas to a Cuban father or mother who is carrying out an official mission;*

(c) *Those born overseas to a Cuban father or mother, with the requirements stipulated by law having been previously fulfilled;*

(d) *Those born outside national territory to a father or mother born in the Republic of Cuba who has lost his/her Cuban citizenship, providing that the claim is made in the way stipulated by law;*

(e) *Foreigners who, owing to exceptional merit achieved in the struggles for the liberation of Cuba, are considered native-born Cuban citizens.*"

On the other hand, article 30 of the Constitution establishes that the following persons are considered naturalized citizens:

(a) *Foreigners who acquire citizenship in accordance with the law's provisions;*

(b) *Those foreigners who served in the armed struggle against the tyranny overthrown on 1 January 1959, provided that they prove this condition in the legally established way;*

(c) *Those foreigners who, having been arbitrarily deprived of their citizenship of origin, obtain Cuban citizenship with the express agreement of the Council of State.*

Law No. 51 of 1985 on the Registration of Civil Status and Resolution No. 157 of the same year, which provides its regulations, include provisions that complement those on citizenship contained in the Constitution.

According to articles 59 and 138 of the above-mentioned regulations, in order to acquire Cuban citizenship a person must submit to the civil status registrar a written request that includes names and surnames, nature of the request, permanent identity number, citizenship, place of birth, age, occupation, area of residence, any other circumstance relating to civil status required for the application, the basis of the application and the date and place of arrival in Cuba. The request should also include the name, surnames and citizenship of the spouse, if applicable, the name and surnames of any Cuban children, and an express statement that he/she renounces his/her current citizenship, intends to acquire Cuban citizenship and will comply with the Republic of Cuba's Constitution and its laws.

Furthermore, a condition of applying for Cuban citizenship is that the interested foreign person should have had an immigration status of permanent resident in the country for a period of more than five years, including at least one year after having stated his/her intention to acquire Cuban citizenship. In the case of marriages of foreigners to Cuban citizens, and where children have been born of the union, the period of permanent residency can be reduced to two years, at the discretion of the competent authority.

Can a foreigner, who is granted citizenship, change his/her name? What precautions are taken to establish the true identity of a person before new identity papers are issued to that person?

Firstly, a foreigner who is acquiring Cuban citizenship is identified by his own name and, consequently, cannot change his/her name or other personal details that identify him/her.

It is necessary to take into account that, in accordance with article 12.1 of Civil Code Law No. 59 of 16 July 1987, "*the civil capacity of persons to exercise their rights and to bring legal action shall be governed by the legislation of the State of which they are citizens*". If a foreigner has acquired Cuban citizenship, he/she may therefore instigate action to change his/her name or surnames before the corresponding civil status registrar, as Cuban law is applicable to him/her under the provisions of Law No. 51/85 on the Registration of Civil Status and Resolution No. 157/58, which provides its regulations.

The regulations establish that, exceptionally, names or surnames may be changed, added to, modified or suppressed once, or up to two times, if the interested person has reached the age of majority. The application will be submitted to the registry office where the interested person resides.

In order to consider authorizing a change, addition, modification or elimination of a name or surname, proof will be required that the name change is justified on the grounds that the name contains words which are not part of common usage, or on the grounds that it is associated with events, objects, animals or items. The individual in question will also be required to demonstrate that he or she is known socially by the desired name or surname.

Changes, additions, modifications or elimination of names or surnames will not be authorized if the desired names or surnames have any of the characteristics described above.

The registrar shall notify the Central Criminal Register in the Ministry of Justice any change, addition, modification or elimination of the name or surname of an individual with a criminal history, so that the appropriate checks can be made.

The application from the individual concerned must be accompanied by a birth certificate, criminal record details, evidence of marriage (if applicable), birth certificates of children (if applicable) and a statement sworn before a notary.

The statement must be sworn before a notary in the presence of two witnesses. It must contain the details required and indicate how the person is known socially, since that is the central matter to which the witnesses must attest, with the notary confirming that they have done so.

The applicant will also be fingerprinted and the fingerprints transmitted officially, with a copy of the decision issued, to the National Identity Directorate of the Ministry of the Interior.

Visas for permanent residence in Cuba are confined mainly to foreign family members (father, mother, spouse and children) of Cuban nationals. Applications may be made by the foreign national in question to the Cuban consulate in the country in which he or she resides, or by the Cuban family member to the immigration authorities in Cuba.

The process for issuing a permanent resident visa may take from six months to one year, depending on the documentation required and the checks which must be made. No foreign national may enter the country without documentation, with forged documentation or with documentation which the immigration authorities consider doubtful.

Any foreign national authorized to stay in Cuba for more than 90 days must have documents issued by the national immigration authorities in addition to his identity documents. In that connection, entry into Cuba will be denied to any foreign national with a record of connections with drug, arms or human trafficking or with terrorism.

The Cuban authorities verify an individual's identity on the basis of his or her personal identity documents, establishing their accuracy by checking fingerprints and other necessary information, including information obtained from Cuban consulates abroad.

1.15 Effective implementation of subparagraphs 2 (c) and (g) of the resolution requires the enforcement of effective customs, immigration and border controls in order to prevent the movement of terrorists and the establishment of safe havens. In this regard, would the Republic of Cuba please outline how it implements the common standards set by the World Customs Organization in relation to electronic reporting and the promotion of supply chain security?

Cuba is a member of the World Customs Organization. The Cuban Customs Service, as the entity responsible for border controls, coordinates with the immigration authorities and other operational bodies of the Ministry of the Interior, maintaining permanent working contacts to prevent individuals with a history of connection with terrorist activities from entering the country and to prevent attempts to bring arms and explosives into the country.

Although there has been no success in securing compulsory advance information on passengers and cargo from the countries from which flights depart, mechanisms have been set up to check all passengers in coordination with the other authorities appointed to carry out those checks. Similarly, checks are carried out on cargo and goods arriving by air, sea or mail.

In this connection, the Cuban authorities are currently examining the possibility of adopting legislation to make it compulsory for airlines to provide advance information on passengers and cargo, so helping to implement the recommendations of the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA).

1.16 With regard to steps taken by the Republic of Cuba in order to strengthen the security of its ports, airports, tourist marinas and coast, referred to in the first report (at pages 13 and 14), please indicate whether the competent Cuban authorities have established procedures periodically to review and update transport security plans.

The Cuban Customs Service, as part of the ministerial border-protection system, has drawn up plans to strengthen security measures and has made permanent the practice of conducting inspection visits to customs units to check compliance with those measures.

Among the aims of the measures are preventing arms and explosives from entering the country and taking the necessary action to protect transportation in general, including ports, airports, tourist marinas and the coast.

In this connection, please also refer to the information in Cuba's first report (S/2002/15, page 43) regarding non-legislative measures adopted in the wake of 11 September 2001.

1.17 The CTC notes from the first report (at page 10) that the Republic of Cuba has implemented the standards and recommendations of the International Civil Aviation Organization (annex 17). Could the Republic of Cuba inform the CTC when the ICAO safety audit of the Republic of Cuba's international airports has been completed?

The ICAO security audit (AVSEC) was conducted in Cuba from 8 to 17 March 2004.

We would point out that the head of the ICAO audit team, in the oral summary he made on 17 March 2004, indicated that Cuba's civil aviation complied with the standards of annex 17 to the Chicago Convention.

Effectiveness of controls preventing access to weapons by terrorists

1.18 Subparagraph 2 (a) of the resolution requires each Member State, inter alia, to have in place appropriate mechanisms to deny access to weapons to terrorists. With regard to this requirement of the resolution, as well as to the provisions of the Convention on the Marking of Plastic Explosives for the Purpose of Detection and the International Convention for the Suppression of Terrorist Bombings, please provide the CTC with information relevant to the following questions:

A) Export control

- **Please describe the system of export and import licensing or authorization, as well as measures on international transit, used by the Republic of Cuba for the transfer of:**
  - **Small arms and light weapons;**
  - **Other firearms, their parts and components and ammunition;**
  - **Explosives and their precursors.**
- **Please specify the export control procedures and existing mechanism for the exchange of information regarding the sources, routes and methods used by traders in firearms.**
- **Do Cuban procedures allow for the lodging and registering or checking of the goods declaration and supporting documents relating to firearms prior to the import, export or transit of the goods? Does Cuba encourage importers, exporters or third parties to provide information to Customs prior to their shipment? Please also outline any appropriate mechanism to verify the authenticity of licensing or authorization documents for the import, export or transit movements of firearms.**
- **Has the Cuban Customs Service implemented intelligence-based risk management of borders to identify high-risk goods? Please outline what data and considerations are used by the Customs Administration to identify high-risk consignments prior to shipment.**

B) Stockpile management and security

- **Please outline the legal provisions and administrative procedures in the Republic- of Cuba that provide for the security of firearms, their parts and components, ammunition and explosives and their precursors at the**

time of their manufacture, import, export and transit through Cuban territory.

- **What national standards and procedures exist for the management and security of firearms and explosives stocks held by the Government of the Republic of Cuba (in particular, held by armed forces, police, etc.) and other authorized bodies?**

- **Has the Republic of Cuba implemented, using risk assessment principles, any special security measures on the import, export and transit of firearms, such as conducting security checks on the temporary storage, warehousing and means of transport of firearms? Are persons involved in these operations required to undergo security vetting? If yes, please give details.**

C) Law enforcement/illegal trafficking

- **What special measures are used by the Republic of Cuba to prevent and suppress illegal trafficking in firearms, ammunition and explosives utilized by terrorists?**

- **Do Cuban law enforcement authorities cooperate with the Interpol system of tracking firearms and explosives?**

Cuba centralizes the import of firearms through its Ministry of Armed Forces and Ministry of the Interior. This prevents individuals connected with criminal activity, including terrorism-related criminal activity, from acquiring such weapons.

Matters connected with authorizing natural or legal persons to import or export firearms, their parts and components, ammunition, explosives or their precursors, are in the hands of the Ministry of the Interior. Imports and exports are subject to production of the appropriate licence and the end-use certificate.

The action which the national customs service takes to prevent and halt trafficking in firearms, explosives and ammunition is encompassed in Decree-Law No. 52 of 1982. Its provisions include compulsory advance notification when natural or legal persons wish to import a firearm into the country. It regulates checks on the legality of permits and types of arms, including their calibre and serial number.

Cuban legislation in this field bans the export from or transit through the country of firearms bound for other countries. The only exception made to this provision is for arms which are for use in sports competitions abroad.

Cuba has legislation and regulations establishing security measures to prevent terrorists from gaining access to firearms, their parts and components, ammunition, explosives or their precursors which are held by the Revolutionary Armed Forces, the Ministry of the Interior, security and protection services authorized by the State to guard civilian targets, and other legal holders.

For further details, please refer to the reply to question 1.9 above regarding border and immigration control, control preventing trafficking in drugs, arms, biological and chemical weapons, their precursors and the illicit use of radioactive materials. We would also recommend consulting the reply to paragraph 2 (a) on pages 7 and 8 of Cuba's supplementary report (S/2002/1093), made in September 2002, and the reply to question 1.8 above on the new Decree-Law on arms and ammunition, which will deal in greater depth with international trade matters and

which is currently in the final stages of review prior to being sent to the appropriate authorities for approval.

The Interpol Havana office has so far received no request for cooperation from Interpol regarding the tracking of firearms or explosives.